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THE

REVISED CODES

OF THE

TERRITORY OF DAKOTA.

A. D. 1877.

COMPRISING THE CODES AND GENERAL STATUTES PASSED AT THE TWELFTH
SESSION OF THE LEGISLATIVE ASSEMBLY, AND ALL OTHER
GENERAL LAWS REMAINING IN FORCE.

PUBLISHED AND [illegible] BY
GEO. H. HAND,
SECRETARY OF DAKOTA

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PREFACE.

The Territory of Dakota is one of a few remnants of that vast public domain, the title of which was acquired by the United States through the celebrated Louisiana Purchase. Though not a part of the territory northwest of the Ohio which was organized under the provisions of the ordinance of 1787, it has been at times under a common organization with a part of that territory, and the benign provisions of that historic enactment have practically been applied to its government and law.

Out of this domain the great western and northwestern states of Missouri, Kansas, Nebraska, Iowa and Minnesota have been organized, besides other more remote states and several divisions which, like Dakota, remain territories. During their existence as territories, the boundaries and extent of these divisions have been subject to frequent and marked changes, and new names have appeared and old ones have disappeared or become permanent in states formed out of a part, rendering, until recently, the political geography of the territories more like the figures in the kaleidoscope. On the maps of forty years ago, this was noted as the Mandan Region or the Mandan Territory. It became once a part of the Michigan Territory, and afterwards the Territory of Wisconsin included all of that present state, of Iowa and Minnesota, and of Dakota as far west as the Missouri river. After the organization of Wisconsin and Iowa as states, Minnesota while a territory, embraced besides its present area, all that portion of Dakota east of the Missouri river; and the boundaries of Nebraska Territory from 1854 to 1861 included that portion lying west of the Missouri river.

The admission of Minnesota as a state, in May, 1858, left all the country west of its diminished boundaries and of Northwest Iowa along the Big Sioux river to the Missouri river on the west, not included in any organization, and occupied by the Indians. This part was with propriety and by common consent designated by the name of Dakota, from the great associated tribe of Indians, known in their own language and among themselves as Dakotas, and recognizing the French word "Sioux" only when learned by long communication with the whites. The first cession of lands within Dakota, was made in 1858 by treaty with a band of the Dakota tribe called in their language, Iancton or Yankton, and with the Poncas, a band of another nation. tribe and dialect, who claimed a part of it This purchase opened 25,000 square miles lying in southeastern Dakota, and this has gradually been extended by successive treaties with the Sioux or Dakotas, until nearly all that east of the Missouri river has been ceded, and at the last session of Congress, in February, 1877, a treaty was ratified and approved by the necessary legislation. which ceded and opened the Black Hills in western Dakota, already celebrated for its wealth in the precious metals and in timber.

White settlement was begun in 1859, but by reason of the critical and disturbed condition of national affairs the act of congress organizing the territory of Dakota was not passed until March 2, 1861. President Lincoln appointed the necessary executive and judicial officers at an early day thereafter, and they came promptly to their posts, so that after June, 1861, Dakota had a government. The original boundaries as declared by this act included, besides the present area of the territory, all that region now embraced in Idaho, Montana and Wyoming, each of which has been created by successive acts, leaving the western boundary of Dakota the 27th meridian of longitude west from Washington. Strong efforts are making to secure the erection of a new territory out of the northern half of Dakota, while at the same time an organized movement is growing for the organization and admission of Dakota, the southern half of the present territory, into the Union as a state. The growth of the territory in wealth and population was practically defeated for several years by the Indian troubles in 1862-3, the effects of which long deterred active development. The southern half, including the Black Hills, has now a population of 80,000 or more, and, with vast areas of the richest farming and best grazing lands, and mines of wonderful richness, a most delightful and salubrious climate, and enterprising, intelligent and law abiding population, with institutions and laws inferior to none, promises a rapid growth and development henceforth.

The first general election was held in September, 1861, and the legislative assembly convened in its first session in March, 1862. It continued for sixty days and passed a carefully prepared and good body of laws. Since that eleven other sessions have been held, and at each various acts were passed, amended, repealed or re-enacted, and throughout the course of this legislation each of the codes now revised and printed has had a more or less distinctive history, and are briefly referred to in their order.

The Political Code embraces the results of a large number of miscellaneous acts passed at the various sessions, but now brought into an orderly arrangement and amended into a harmonious and practical system. It comprises those matters which relate to the government of the territory, under the organic laws by congress, the powers and duties of its officers and subordinate municipal corporations, and the nature and management of its institutions.

The Civil Code embraces those divisions of the law which relate to persons and their relations, to property of every kind, and to obligations of every nature in relation to persons and property, including the entire subject of private corporations; and as a code of written law, had its origin in the uncompleted labors of a commission appointed by the state of New York. This part of their work was not perfected or enacted in that state, but first took the form of a statute in an act passed at the fifth session of the legislative assembly of Dakota, and approved January 12th, 1866, thus having been in force here, though not in a complete form, over eleven years. It was then taken by a commission in California in 1872, and revised and amended, and was enacted as the law of that state in 1873, and has now been again revised, enlarged and re-enacted by Dakota as it appears herein.

The Code of Civil Procedure embraces, together with the Probate Code and the Justices' Code, which are properly parts of it, the jurisdiction of the courts of justice and the judicial and other officers thereof, and all the actions, special proceedings, writs and process, and the methods and means generally, which may be employed for the enforcement of rights and the remedies for their violation. A code of a different origin was enacted by the first session in 1862, and was repealed by implication in 1868, and expressly in 1873. The present code originated also in New York, where it was enacted into law. In an abridged form it was enacted in Dakota in 1868, and took effect on the first day of June in that year. It was also amended and adopted by the state of California in 1873. It has been here completely revised, amended, enlarged and re-enacted in its present comprehensive form.

The Probate Code has received special care, and embraces the latest and best results of legislation and judicial interpretation.

The Justices' Code was also entirely revised, and a really new code was prepared, more brief, exact and simple than the repealed code.

The Penal Code consists of a systematic classification of public offenses, according to the latest and best examples of legislation, with such provisions as are required by our peculiar circumstances, and it fully provides for the prevention of crimes and the punishment of offenders.

The Code of Criminal Procedure had its origin in New York, and it was revised and adopted in California. It was enacted in substantially its present form, but abridged on certain subjects, by the eleventh session of the legislative assembly of Dakota, and approved January 15, 1875. An amendatory act was passed by the late session of the assembly supplying the parts before omitted, and the whole code is thus revised according to the latest and best examples of legislation in the most enlightened states. A few unrepealed and miscellaneous enactment are inserted in the volume in their appropriate connections, and the general repealing act is printed at the close, thus bringing into this volume all the public and general laws and statutes now in force in the territory.

By an act of the eleventh session of the legislative assembly, entitled "An act to provide for revising and codifying the laws of Dakota Territory," approved January 14, 1875, the governor was empowered, and it was made his duty, to select and appoint a commission of "three competent and worthy persons, learned in the law, to revise and codify the laws of this territory;" and for that purpose the act gave the commission "authority to add to or take from the laws now (then) in force, whatever may be necessary to make a perfect and complete code of laws for this territory." The commission was further authorized to employ a secretary to assist them. In pursuance of this law, His Excellency JOHN L. PENNINGTON, governor of the territory, commissioned the following gentlemen, viz: The Honorable P. C. SHANNON, chief justice of the supreme court of the territory; The Honorable GRANVILLE G. BENNETT, associate justice of the supreme court, and The Honorable BARTLET TRIPP.

This commission organized in January, 1876, by the election of Hon. P. C. SHANNON as chairman, and the unanimous choice of Gen. WM. H. H. BEADLE as secretary. Besides the great study each one had previously given to the whole subject, or various parts of it, the separate or joint labors of these commissioners continued from time to time throughout the year 1876, and during the session of the legislative assembly, beginning January 9th, and closing February 17th, 1877, and until the last hour thereof.

Besides his labors as secretary of the commission, Gen. W. H. H. BEADLE was also a member of the house of representatives, and therein served as chairman of the judiciary committee, which had original charge of all the several bills comprising the codes.

The Revised Codes, as now enacted and printed, save a very few and unimportant blemishes, are believed to embrace the best results of legislation in this country, and also to express the weight of the latest and most enlightened judicial learning and judgment. In them the territory, or the future state, has an invaluable public heritage which should be changed only with intelligent conservatism and the general integrity of which should be preserved with conscientious fidelity.

G. H. H.

THE ORGANIC LAW.

The following includes all those sections of Title XXIII, Revised Statutes of the United States, upon the Territories, which refer to Dakota:

SEC. 1900. All that part of the territory of the United States included within the following limits, namely: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence up the main channel of the same, and along the boundary of the state of Minnesota to Big Stone Lake; thence along the boundary line of the state of Minnesota to the Iowa line; thence along the boundary line of the state of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river, and along the boundary line of the state of Nebraska to the mouth of the Niobrara or Running Water river; thence following up the same, in the middle of the main channel thereof, to the mouth of the Keha Paha, or Turtle Hill River, thence up that river to the forty-third parallel of north latitude; thence due west to the twenty-seventh meridian of longitude west from Washington; thence due north on that meridian to the forty-ninth degree of north latitude; thence east along the forty-ninth degree of north latitude to the place of beginning, is organized into a temporary government by the name of the Territory of Dakota.

SEC. 1839. Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular Territory.

SEC. 1840. Nor shall anything in this title be construed to affect the authority of the United States to make any regulations respecting the Indians of any territory, their lands, property or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established in any such territory.

SEC. 1841. The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander in chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws of the territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed.

SEC. 1842. Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered upon the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment sine die, prevent its return, in which case it shall not be a law.

SEC. 1843. There shall be appointed a secretary for each territory, who shall reside within the territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence, or until another governor is appointed and qualified

SEC. 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate, and to the speaker of the house of representatives, for the use of congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the president. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each.

SEC. 1846. The legislative power in each territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and house of representatives shall reside in the district or county for which they are respectively elected.

SEC. 1922. The council of Dakota shall consist of nine members, which may be increased to thirteen, and the house of representatives of thirteen members, which may be increased to twenty-six.

SEC. 1847. Previous to the first election for members of the legislative assembly of a territory in which congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the governor may direct, and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties and districts is entitled under the act providing such temporary government for the particular territory. The persons having the highest number of legal votes in each of the districts for members of the council shall be declared by the governor to be duly elected to the council, and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house, but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly the governor shall order a new election, and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

SEC. 1848. After such first election, however, the time, place and manner of holding elections by the people in any newly created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory.

SEC. 1849. The apportionment of representation which the governor is authorized to make by section 1847, in the case of a territory hereafter erected by congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, except Indians not taxed, and thereafter in such new territory, as well as in all territories now organized, the legislative assemblies respectively may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper, but the members of either house, as authorized by law, shall not be increased.

SEC. 1851. The legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents.

SEC. 1925. In addition to the restrictions upon the legislative power of the territories, contained in the preceding chapter, section eighteen hundred and fifty-one, the legislative assemblies of Colorado, Dakota and Wyoming shall not pass any law impairing the rights of private property, nor make any discrimination in taxing different kinds of property; but all property, subject to taxation, shall be taxed in proportion to its value.

SEC. 1852. The sessions of the legislative assemblies of the several territories of the United States shall be limited to forty days duration.

SEC. 1853. The members of each branch of the several territorial legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided*, That the president of the council and the speaker of the house of representatives shall each receive a compensation of ten dollars per day.

SEC. 1942. The members of the legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona and Wyoming Territories shall each receive three dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

SEC. 1854. No member of the legislative assembly of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply in the territory of Washington.

SEC. 1855. No law of any territorial legislature shall be made or enforced by which the governor or secretary of a territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States.

SEC. 1856. Justices of the peace and all general officers of the militia in the several territories shall be elected by the people in such manner as the respective legislatures may provide by law.

SEC. 1857. All township, district and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section, and assign them to their respective townships, districts, and counties, and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

SEC. 1858. In any of the territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens, in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

SEC. 1860. At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color or previous condition of servitude.

Third. No officer, soldier, seaman, mariner or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any territory, by reason of being on service therein, unless such territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to, or hold any civil office or appointment in any territory.

SEC. 1861. The subordinate officers of each branch of every legislative assembly shall consist of one chief clerk, who shall receive a compensation of eight dollars per day, and of one assistant clerk, one enrolling clerk, one engrossing clerk, one sergeant-at-arms, one doorkeeper, one messenger, and one watchman, who shall each receive a compensation of five dollars per day, during the sessions, and no charge for a greater number of officers and attendants, or any larger per diem, shall be allowed or paid by the United States to any territory.

SEC. 1862. Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting.

SEC. 1863. The first election of a delegate in any territory for which a temporary government is hereafter provided by congress shall be held at the time and places, and in the manner the governor of such territory may direct, after at least sixty day's notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized territories, such time, places and manner of holding the election shall be prescribed by the law of each territory

SEC. 1864. The supreme court of every territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the territory for which they are respectively appointed.

SEC. 1865. Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section 1907 and 1908, shall be limited by law.

SEC. 1867. No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

SEC. 1926. Justices of the peace, in the territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana and Wyoming shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

SEC. 1868. The supreme court and the district courts, respectively, of every territory, shall possess chancery, as well as common law jurisdiction.

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

SEC. 1870. The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

SEC. 1871. Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

SEC. 1873. Temporarily, and until otherwise provided by law, the governor of every territory which may be hereafter established shall define, by proclamation, the judicial districts of such territory, and assign the judges appointed for such territory to the several districts as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

SEC. 1874. The judges of the supreme court of each territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

SEC. 1875. There shall be appointed in each territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

SEC. 1876. There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

SEC. 1877. The governor, secretary, chief justice and associate justices, attorney and marshal, of every territory, shall be nominated, and by and with the advice and consent of the senate, appointed by the president.

SEC. 1878. The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified and recorded in such manner and form as may be prescribed by the law of each territory.

SEC. 1879. The annual salary of the chief justice and associate justices of all the territories now organized, shall be three thousand dollars each.

SEC. 1880. The salary of the attorney of the United States for each territory shall be at the rate of two hundred and fifty dollars annually.

SEC. 1881. The salary of the marshal of the United States for each territory shall be at the rate of two hundred dollars a year.

SEC. 1882. The salaries provided for in this title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several territories, shall be paid quarter-yearly at the treasury of the United States.

SEC. 1935. There shall be appropriated annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerk in the executive departments of those territories.

SEC. 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the territories of the United States shall be the same for similar services by such persons as prescribed in chapter 16, title "The Judiciary," and no other compensation shall be taxed or allowed.

SEC. 1884. When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

SEC. 1885. The legislative assembly of every territory hereafter organized shall hold its first session at such time and place in the territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

SEC. 1886. All accounts for disbursements in the territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the treasury department; and no act, resolution, or order of the legislature of any territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made.

SEC. 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

SEC. 1939. There shall be appropriated respectively, for the territories of New Mexico, Utah, Colorado, Dakota, Arizona and Wyoming, annually, a sufficient sum, to be expended by the secretary of each territory herein named, upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly and other incidental expenses; and the secretary of each territory above specified shall, annually, account to the secretary of the treasury for the manner in which such sum has been expended.

SEC. 1888. No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses.

SEC. 1889. The legislative assemblies of the several territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association.

SEC. 1890. No corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto, shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

SEC. 1891. The constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere within the United States.

SEC. 1892. Any penitentiary which has been, or may hereafter be, erected by the United States in an organized territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado.

SEC. 1893. The attorney general of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the attorney general.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

SEC. 1895. Any person convicted by a court of competent jurisdiction in a territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

SEC. 1946. Sections numbered 16 and 36 in each township of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming shall be reserved for the purpose of being applied to schools in the several territories herein named, and in the states and territories hereafter to be erected out of the same.

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CLERKS' FEES.

[The following is section 828 of the revised statutes of the United States, and the law referred to in section 4, page 186, as governing the fees of clerks of the district courts:]

For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpœna for a witness, one dollar.

For issuing a writ of summons or subpœna, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of an entry or record, or of any paper on file, for each folio, ten cents.

For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment, or other lien, fifteen cents.

For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

AUTHENTICATION.

DAKOTA TERRITORY,
SECRETARY'S OFFICE, YANKTON.

I, GEO. H. HAND, Secretary of the Territory of Dakota, do hereby certify that the laws contained in this volume are true and correct copies of the original enrolled bills of a public nature, passed by the Legislative Assembly, at the twelfth session thereof, begun and held at Yankton, January 9th, A. D., 1877, and other public and general statutes unrepealed and remaining in force, now on file in my office.

Witness my hand and the seal of the Territory hereunto affixed, this first day of March, in the year of our Lord, one thousand eight hundred and seventy-seven.

L. S.

GEO. H. HAND,
Secretary of Dakota Territory.

ERRATA.

Page 309, line 2, for 1292 read 1272; for 1284 read 1264, and for 1294 read 1274.

Page 370, section 908, for 972 read 953.

Page 374, section 953, line 1, for "unlawful" read "lawful."

Page 474, section 1861, line 1, strike out word "not."

Page 527, section 104, subdivision 5, is complete with line 1. Insert a period in place of the comma after the word marriage. The remainder of the section is a paragraph relating to the entire section.

Page 793, section 448, line 2, for 446 read 447.

REVISED CODES

OF THE

TERRITORY OF DAKOTA.

POLITICAL CODE.

CHAPTER 1.

SEAT OF GOVERNMENT.

AN ACT to Establish a Political Code or the Territory of Dakota.

§ 1. SEAT OF GOVERNMENT LOCATED AT YANKTON.] *Be it enacted by the legislative assembly of the territory of Dakota.* The seat of government is hereby located and established in the city of Yankton, in the county of Yankton.

CHAPTER 2.

LEGISLATURE.

§ 1. MEMBERS ELECTED BIENNIALLY FOR TERM OF TWO YEARS.] The members of both branches of the legislative assembly shall be elected at the general election in 1878, and biennially thereafter, and shall hold their respective offices for the term of two years.

§ 2. SESSIONS WHEN AND WHERE HELD.] The regular session of the legislative assembly shall commence on the second Tuesday of January, next ensuing the election of its members, and shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger.

§ 3. PRIVILEGE OF MEMBERS.] No member or officer of the council or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest upon civil process.

§ 4. PUNISHMENT BY EACH HOUSE FOR OFFENSES.] Each house may punish, as a contempt, by imprisonment, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses, to-wit: 1. Knowingly arresting a member or officer of the house, or procuring such member or officer to be arrested, in violation of his privileges from arrest. 2. That of disorderly conduct in the immediate view of the house, and directly tending to interrupt its proceedings. 3. That of refusing to attend to be examined as a witness, either before the house, or a committee, or before any person authorized to take testimony in legislative proceedings. 4. That of giving or offering a bribe to a member, or of attempting, by menace, or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section, shall not extend beyond the same session of the legislature.

§ 5. CONTEMPT—MISDEMEANOR.] Every person who shall be guilty of any contempt specified in the preceding section, shall, also, be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, at the discretion of the court.

§ 6. ADMINISTERING OATH TO MEMBERS AND OFFICERS.] The speaker of the house of representatives and the president of the council, the governor, or any of the justices of the supreme court are authorized to administer the oath of office to the members and officers of the respective houses.

§ 7. OATH OF MEMBERS.] The members shall be required to take and subscribe the following oath :

You do solemnly swear that you will support the constitution of the United States and the organic act of the Territory of Dakota, and that as a member of this house of representatives, (or this council, as the case may be;) you will not propose or assent to any bill, vote or resolution which shall appear to you injurious to the people, nor do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges as declared by the constitution of the United States, and the organic act of this Territory, but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. So help you God.

§ 8. COMMITTEE MAY ADMINISTER OATH.] Any member of the council or house of representatives, while acting as a committee of the house of which he is a member, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member.

§ 9. CONTESTED SEATS.] In case the right of any person to a seat in either house of the legislative assembly shall be contested, the right of such person to a seat as aforesaid, shall be determined by the house in which he claims such seat as a member ; and each house shall in all cases be the judge of the qualifications of its members.

§ 10. OFFICERS OF RESPECTIVE HOUSES.] The officers of the respective houses shall consist of a president of the council, who must be a member of that body ; a speaker of the house, who must be a member of that body ; and for each house one chief clerk, one assistant clerk, one engrossing clerk, one enrolling clerk, one sergeant-at-arms, one doorkeeper, one messenger, and one watchman.

§ 11. OFFICERS ELECTED VIVA VOCE—OATH.] The said officers shall be elected *viva voce*, by the members of each house respectively, at such time, after the meeting of said house, as the members thereof shall see proper ; and shall be required to take and subscribe the same oath as is provided for other civil officers ; but neither house shall transact any business other than the election or appointment of officers, until said officers are elected or appointed *pro tem.*, on motion.

§ 12. CHIEF CLERKS TO KEEP JOURNALS, &C.] It shall be the duty of the chief clerk of the council and chief clerk of the house of representatives, to keep correct journals of the proceedings of their respective houses ; to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly, shall deposit for safe keeping in the office of the secretary of the territory, all books, bills, documents, resolutions and papers in the possession of the legislature, correctly labelled, folded, and classified, and generally to perform such duties as shall be assigned them by their respective houses : *Provided*, The journals of the two houses need not be deposited as above provided until the expiration of forty days after the adjournment of the legislative assembly.

§ 13. CHIEF CLERKS TO PREPARE AND INDEX JOURNALS, &c.] It shall be the duty of the chief clerk of the council and the chief clerk of the house, at the close of each session, to prepare for the press and superintend the publication of the journals of the proceedings of their respective houses, and to affix an index thereto ; and to transcribe into a book kept for that purpose, the documents accompanying the message of the governor, or by him sent to either house, other than those entered on the journal, or the documents reported to either branch of the legislative assembly by any public officer of the territory, in pursuance of law, for which service they shall be allowed such compensation as the legislature shall from time to time determine ; but in no event to be less than their regular per diem, for the time actually employed in performing said labor.

§ 14. CHIEF CLERKS TO MAKE ROLL OF MEMBERS.] It shall be the duty of the said chief clerks, at the opening of every session of the legislative assembly, to make a correct roll of the members of their houses, respectively, to whom certificates of election have been issued by the proper officers, which certificates shall be filed by said secretary and chief clerk.

§ 15. SESSIONS CALLED TO ORDER BY CHIEF CLERKS OF LAST HOUSES.] In all cases, the said chief clerks, serving at the close of a session, shall remain in office until the organization of the next regular session of the legislature, and at twelve o'clock, meridian, on the day appointed by law for the meeting of the legislative assembly, the said chief clerks, or in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the council and house of representatives, shall expire with the close of the session at which they were elected, except the chief clerk of the council and the chief clerk of the house, for the purposes herein designated.

§ 16. COMPENSATION OF OFFICERS—HOW CERTIFIED.] The compensation prescribed by law for the officers of the council shall be certified by the president thereof, and attested by the chief clerk ; and the compensation that may be due to the officers of the house of representatives, shall be certified by the speaker thereof, and attested by the chief clerk, which said certificates, when made out as aforesaid, shall be sufficient evidence to the secretary of the territory of each person's claim.

§ 17. EITHER HOUSE MAY REMOVE OFFICERS.] It shall be competent at any time during a session of the legislative assembly, for either house, by a vote of a majority, to remove from office any of the officers provided for in this chapter ; but in case of the removal of any officer by either house, his place shall be supplied by an election, *viva voce;* and in all elections under the provisions of this chapter for officers of either house of the legislative assembly, it shall require a majority of all the votes cast to determine a choice.

CHAPTER 3.

THE STATUTES.

§ 1. SECRETARY TO PROCURE PRINTING OF LAWS.] The secretary of the territory shall procure the printing of one thousand copies of the general laws, and five hundred of the memorials, private laws and resolutions, passed at each session of the legislative assembly, and have the same separately bound, as follows: Of the general laws, five hundred copies in law sheep; two hundred and fifty copies in half binding, with leather backs and corners, and the remaining two hundred and fifty copies, and the memorials, private laws and resolutions, in durable pamphlet form; and they shall all be prefaced by a table of contents, and shall contain a full and correct index.

§ 2. SECRETARY TO ARRANGE AND CORRECT LAWS.] In arranging the laws, memorials and resolutions for publication, the secretary aforesaid is hereby authorized to make such corrections in the orthography, grammatical construction and punctuation of the same, as in his judgment shall be deemed essential: *Provided*, That when any words or clauses shall be inserted, the same shall be inclosed in brackets.

§ 3. DISTRIBUTION OF LAWS.] The secretary aforesaid is hereby authorized to distribute the laws, after they shall have been printed and bound, in the manner hereinafter specified.

§ 4. TO WHOM AND HOW DISTRIBUTED.] The following named officers of this territory and of the counties therein, and none others, shall be entitled to receive, without cost to the person holding such office, one copy each of the bound volumes of laws enacted by the legislative assembly of this territory, to-wit: The chief justice of the supreme court of the district of Dakota; each associate justice of said supreme court; each clerk of the district court; the United States attorney for the district of Dakota; the United States marshal for the district of Dakota; each United States commissioner appointed by any judge of this territory; the governor of the territory; the secretary of the territory; the auditor; the treasurer; the superintendent of public instruction; the superintendent of immigration; the librarian of the historical society of Dakota territory; each district attorney; each judge of the probate court; each sheriff; each register of deeds; each county clerk; each justice of the peace; each coroner; each county superintendent of public schools; each assessor; each chairman of the board of county commissioners; and one copy to each library association organized for the benefit of the public in any county or town in this territory; and one to each member of the legislative assembly of the session of which he was a member.

§ 5. COPIES TO CERTAIN OFFICERS OF UNITED STATES.] It is hereby made the duty of the secretary of this territory, whenever any volumes of the laws of this territory shall come into his hands, to transmit to each federal and territorial officer and United States commissioner, clerks of the United States district and supreme court, and each district attorney, one volume of such laws, prepaying the postage thereon if sent by mail, and the said secretary shall state an account of his disbursements for postage or carriage of such volumes so sent by him, to the auditor of the territory, who is hereby authorized to audit the same if in his judgment it be just and correct, and when so audited, the treasurer of the territory is authorized to pay the same out of any money in his hands not otherwise appropriated.

§ 6. COUNTY OFFICERS—HOW SUPPLIED.] The county clerks of the several counties of this territory, shall, on the first Monday of February next succeeding the time when any session of the legislative assembly shall be held, make a requisition upon the secretary of the territory for as many copies of the laws of said session as may be required to supply one copy to each county, district or township office entitled to the same, and shall forward said requisition to said secretary, who shall thereupon or as soon thereafter as he shall receive the said volumes of laws, forward the number of copies called for by said requisition, to said clerk, either by express, or in any other secure manner, the charges of said carriage to be borne by the county receiving such laws. The county clerk, upon receiving the laws, shall distribute them to the several officers entitled by law to the same, taking, in every instance, the official receipt of the officer to whom they are delivered, said receipt to describe the date of the volume so delivered, and to be thereafter filed in the office of said county clerk.

§ 7. OFFICERS TO DELIVER LAWS TO SUCCESSORS.] That whenever any person shall be elected to fill any of the county, town or district offices mentioned in section one of this act, it shall be such person's duty, before taking possession of the said office, to procure from the county clerk of their county a copy of the receipt filed with said clerk by the outgoing officer for any volumes of the laws of this territory, which copy of said receipt the person so elected shall exhibit to his predecessor in office at the time when he shall assume the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by the receipt on file with the county clerk; and it shall be the duty of the said officer after having received from his predecessor the volumes of laws as heretofore specified, to make out duplicate receipts of the same, one of said receipts to be given to his predecessor in office, and the other to be forthwith transmitted to the county clerk of the county, who is hereby required to file the same in his office.

§ 8. OFFENSE FOR FAILURE TO DELIVER STATUTES TO SUCCESSOR.] In case any person holding an office in this territory, or in any county, township or district thereof, shall, upon relinquishing said office to his successor, fail or refuse to deliver over to his successor in office all the volumes of laws that have come into his possession by virtue of holding such office, such person so failing or refusing shall be liable, upon conviction, to a fine of fifty dollars, or to imprisonment in the county jail not exceeding twenty days, and it is hereby made the duty of the person succeeding to the office of such delinquent to file complaint against him before a justice of the peace: *Provided*, That in case the person so failing or refusing to deliver said volumes of laws can show to the satisfaction of the justice that said volumes have been destroyed or stolen in a manner for which the said delinquent person should not be held responsible, then and in that case no penalty shall be imposed.

§ 9. LOST VOLUMES OF STATUTES—HOW SUPPLIED.] Whenever any county, township, or precinct officer entitled to a copy of the laws of this territory, shall, through the neglect or refusal of his predecessor in office to turn such laws over to him, or through loss occasioned by fire, theft or other cause for which said person cannot be held responsible, be without such laws, such person is hereby authorized to make a written requisition upon the county clerk of his county for such volumes of laws as may be required, and the said clerk is authorized to proceed in the manner hereinbefore provided for the general distribution to supply the said requisition: *Provided*, That the secretary shall be authorized to charge the county from which such requisition is made, the cost, with ten per cent. added, for each and every additional volume so furnished, which said amount shall be allowed by the board of commissioners of said county, and paid over to the secretary, in cash, who shall in turn pay the same to the territorial treasurer, taking his official receipt therefor.

§ 10. SECRETARY TO SELL STATUTES.] The secretary of the territory shall sell to any party applying therefor the volumes of laws of this territory, for the cost and ten per cent. added per volume, and pay over to the territorial treasurer all sums so received, taking the official receipt of said treasurer therefor.

§ 11. COPIES OF LAWS FOR TERRITORIAL LIBRARY.] Ten volumes of the laws of Dakota passed by each legislative assembly shall be placed in the territorial library by the secretary of the territory, and shall be kept therein for the use of any person visiting said library, but shall not be loaned or otherwise disposed of.

CHAPTER 4.

TERRITORIAL SEAL.

§ 1. GREAT SEAL OF THE TERRITORY.] The following described seal is hereby declared to be and is hereby constituted the great seal of Dakota territory, to-wit: A tree in the open field, the trunk of which is surrounded by a bundle of rods, bound with three bands; on the right, plow, anvil, sledge, rake and fork; on the left, bow crossed with three arrows, Indian on horseback pursuing a buffalo towards the setting sun; foliage of the tree arched by half circle of thirteen stars, surrounded by the motto: "Liberty and Union, one and inseparable, now and forever;" the words "Great Seal" at the top, and at the bottom, "Dakota Territory; on the left, "March 2; on the right, "1861." Seal two inches and a half in diameter.

CHAPTER 5.

QUALIFICATION FOR OFFICE.

§ 1. CIVIL OFFICERS TO QUALIFY.] Except as otherwise specially provided, all civil officers shall qualify substantially in manner and form as herein set forth.

§ 2. CERTAIN OFFICERS TO GIVE BOND.] All civil officers elected by the people, or appointed by the governor or legislative assembly, or by any other authority provided by law, except the superintendent of public instruction, the territorial superintendent and all members of the bureau of immigration, stenographers, county commissioners, county surveyors, county superintendent of public schools, county clerk, the officers of the council and house of the legislative assembly, but including township treasurers, clerks, justices of the peace and constables, shall, before entering upon duty, give bond conditioned that they will faithfully and impartially discharge the duties of their office, (naming it fully,) and render a true account of all moneys, credits, accounts and property of any kind that shall come into their hands as such officer, and pay over and deliver the same according to law.

§ 3. OATH OF OFFICE ON BACK OF BOND.] Every civil officer who is required to give bond shall take and subscribe on the back of his bond or a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States and the act organizing this territory, and that he will faithfully and impartially, to the best of his knowledge and ability, perform all the duties of his office, (naming it fully,) as provided by the condition of his bond written within.

§ 4. OATH ON BACK OF COMMISSION.] All other civil officers are required to take and subscribe on the back of their appointment, commission or certificate of election, an oath to support the constitution of the United States and the act organizing this territory, and to faithfully and impartially perform all the duties of their office, (naming it fully,) to the best of their knowledge and ability.

§ 5. BONDS—HOW APPROVED.] The bonds of all territorial and district officers shall be given to the territory, shall be approved by the governor or one of the justices of the supreme court of the territory, and shall, together with the oaths of all other such officers, be filed in the office of the secretary of the territory. The bonds of all county, township and precinct officers shall be given to the county; those of all county and precinct officers under the county shall be approved by the board of county commissioners, and shall, together with the oaths of office of all other such officers, be filed with the county clerk, except the bond and oath of the register of deeds, which shall be filed with the clerk of the district court for the county or judicial sub-division. The bonds of township officers shall be approved by the chairman of the township board of supervisors of the township, and shall be filed in the office of the clerk of the district court for the county or judicial sub-division; and the oaths of all other township officers shall be filed in the office of the township clerk.

§ 6. PENAL SUM OF BONDS] The bond of the territorial auditor shall be in the penal sum of one thousand dollars; of the territorial treasurer in the penal sum of five thousand dollars; of clerk of the district court in the penal sum of one thousand dollars; of the district attorney in the penal sum of one thousand dollars; of notaries public in the penal sum of five hundred dollars. The bonds of the county register of deeds, judges of probate court, sheriffs, coroners, treasurers, and all assessors, justices of the peace, and constables, whether of the county or any township therein, and all township treasurers, shall each be in a penal sum to be fixed by the board of county commissioners; but that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be by him collected in any year is less than two thousand dollars, then in double the amount of taxes to be collected: *Provided*, That in no case shall the bond of said county treasurer be less than one thousand dollars. Those of justices of the peace shall not be in a less penal sum than three hundred dollars each; and those of constables shall not be in a less penal sum than two hundred dollars each; and the penalty of the bond shall be uniform within the county for all officers of each class where there is more than one of a class.

§ 7. NUMBER OF SURETIES TO BOND.] Every official bond shall be given with at least two sureties, and the bond of the territorial treasurer shall have at least four sureties, and that of the county treasurer at least three sureties.

§ 8. APPROVAL OF BOND.] The approval shall in all cases be indorsed upon the bond and signed by the officer approving, or by the chairman of the board of county commissioners; but in case the board of county commissioners or the chairman of the township board of supervisors should decide a bond presented to them to be insufficient, a reasonable time, not to exceed five days, shall be allowed the officer to supply a sufficient bond, and either board may take three days to consider the approval of any bond. If either board refuse or neglect to approve the bond of any county officer or township officer elect, he may present the same to the judge of the district court and serve notice thereof upon the board; and due proof of such service being made to the judge at the time therein named, he shall, unless good cause for delay appear, proceed to hear and to determine the sufficiency of the bond, and may approve the same, and such approval shall be in all respects valid.

§ 9. WHEN REGULAR TERM OF OFFICE BEGINS.] Except when otherwise specially provided, the regular term of office for all county, township and precinct officers, when elected for a full term, shall commence on the first Monday of January next succeeding their election; but if the office to which he was elected be vacant at the time of election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office.

§ 10. WHEN OFFICERS SHALL QUALIFY.] Except where otherwise specially provided, all territorial, district, county, township and precinct officers shall qualify and enter upon the duties of their office on the first Monday of January succeeding their election, or within ten days thereafter.

§ 11. OFFICE VACANT—WHEN.] If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law, such office shall be deemed vacant, and shall be filled by appointment by the authority provided by law to fill such vacancy: *Provided, however*, That if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties of such office, the time prescribed in which he shall qualify and enter upon the duties of his office shall not govern, and he shall be allowed twenty days after the day of such decision, or the termination of such preventing or obstructing cause, in which to qualify.

§ 12. BONDS CONSTRUED TO COVER DUTIES.] The bonds and oaths of all civil officers shall be construed to cover duties required by law subsequent to giving them; and no official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein.

§ 13. RE-ELECTED INCUMBENT TO ACCOUNT BEFORE QUALIFYING.) When the incumbent of any office is re-elected, he shall qualify as above required; but his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term, to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be indorsed upon the new bond before its approval.

§ 14. ALL OFFICERS MUST DELIVER PUBLIC PROPERTY TO SUCCESSOR.) Every officer elected or appointed under the laws of the territory, on going out of office at the expiration of his term thereof, shall deliver to his successor in office all public moneys, books, records, accounts, papers and documents in his possession belonging or appertaining to such office.

CHAPTER 6.

DEPUTIES.

§ 1. CERTAIN OFFICERS MAY APPOINT A DEPUTY.] The territorial auditor, treasurer and superintendent of public instruction, the county treasurer, sheriff, register of deeds, surveyor, clerk of the district court and assessor may each appoint a deputy, for whose acts as such he shall be responsible; and each officer required to give bond may require a bond from his deputy in a penal sum not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection; and the appointment must be in writing, and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as, and where, required for the bond and oath of the principal.

§ 2. WHO MAY APPOINT ADDITIONAL DEPUTIES.] The county assessor may appoint a deputy in each government township, or any number of deputies, and the sheriff may appoint such number of deputies as he may deem necessary; and the district attorney may appoint a deputy in each organized county in which a district court is, or may be, directed to be held..

§ 3. OATH OF DEPUTY.] Each deputy shall take and subscribe the same oath as his principal (naming his deputyship), which shall be indorsed upon and filed with his certificate of appointment.

§ 4. CERTAIN DEPUTIES FORBIDDEN.] No territorial officer can appoint as his deputy any other territorial or any district officer, nor can a territorial treasurer appoint as his deputy any county treasurer, judge of the probate court, register of deeds, sheriff, or county commissioner; nor can either the clerk of the district court, the register of deeds, or sheriff, appoint as his deputy either of the others or their deputies.

CHAPTER 7.

TERRITORIAL AUDITOR.

§ 1. GOVERNOR TO APPOINT AUDITOR—OFFICE AT CAPITAL.] There shall be nominated by the governor, and by and with the consent of the council, shall be appointed a territorial auditor who shall hold his office for the term of two years, and until his successor is appointed and qualified. He shall keep his office at the capital of the territory.

§ 2. ALL ACCOUNTS TO BE AUDITED.] All accounts and claims against the territory, which shall be by law directed to be paid out of the treasury thereof, shall be presented to the auditor, who shall examine and adjust the same, and, for the sums which shall be found due from the territory shall issue warrants, payable at the territorial treasury, which shall be numbered consecutively, and each shall specify the date of its issue and the name of the person to whom payable; and the number, date of issue and name of the person to whom payable of each warrant, and corresponding thereto shall be entered upon a stub for each warrant separately, and these stubs shall be carefully preserved by the auditor in his office.

§ 3. FRACTIONAL WARRANTS AUTHORIZED.] When the amount due from the territory to any one person is ascertained and adjusted, the auditor, if requested, shall divide the sum into amounts of from one to twenty dollars, to suit the convenience of the person entitled thereto, and shall issue warrants for the several amounts separately into which the sum shall be so divided and equal to the whole amount thereof; and any warrant already issued that may be returned by the holder thereof to the auditor, he may cancel and issue in lieu thereof small warrants, as herein provided, equal in the aggregate to the face value of the warrants cancelled.

§ 4. REDEMPTION OF WARRANTS.] For the redemption of all warrants issued in conformity with the provisions of this chapter, the credit of the territory is hereby pledged.

§ 5. WARRANTS TO BE NUMBERED.] The auditor shall enter, in progressive order, in a book or books to be provided by him for that purpose, the number of each warrant by him issued, the amount thereof, the date of its issue and the name of the person to whom issued, and the fund on which said warrant is drawn.

§ 6. METHOD OF AUDITOR'S ACCOUNTS.] The auditor shall make and keep in his office, in suitable books to be procured at the expense of the territory, fair and accurate accounts showing the debits and credits of each separate fund or appropriation by giving such funds credit for the full amount appropriated by law, and by charging to such funds severally the amounts drawn against them from time to time, and he shall also keep records of all such public accounts and other documents as have been or may be by law made returnable to his office, and shall keep a file in progressive order of all receipts and warrants returned as redeemed from the territorial treasurer, and other vouchers relative to the business of his office.

§ 7. BIENNIAL REPORT OF AUDITOR.] The auditor shall submit a biennial report to the governor of the territory on or before the 15th day of December preceding each regular session of the legislative assembly, which report shall show for the preceding fiscal term ending on the 30th day of November:

1. A statement of date, number and amount of each warrant, the person in whose favor, and on what fund, each warrant was drawn.

2. The total amount of warrants redeemed and returned to him by the territorial treasurer.

3. A statement of the accounts of the several funds and appropriations, which shall show the sums appropriated for each fund, the amount of warrants on each fund, and the unexpended balances of the same.

4. Such remarks on the finances of the territory as he shall deem proper, which report shall be transmitted by the governor to the legislative assembly.

§ 8. AUDITOR TO TRANSMIT TO TREASURER STATEMENT OF ASSESSMENTS.] The auditor shall transmit to the territorial treasurer a statement of the assessments of each county of the territory as soon as practicable after the abstracts of such assessments shall be received from the county clerks of the several counties.

§ 9. LEGISLATIVE INSPECTION OF BOOKS.] Whenever required he shall submit his books, accounts and vouchers to the inspection of the legislative assembly, or any committee thereof, appointed for that purpose.

§ 10. LIST OF LANDS BECOMING TAXABLE.] He shall transmit to the register of deeds of each county, on or before the first day of March in each year, a list of lands within such county which shall have become subject to taxation within the preceding year, agreeable to the information by him received from the land office or offices in the territory.

§ 11. TRANSMIT FORMS AND INSTRUCTIONS TO COUNTY CLERKS.] He shall from time to time prepare and transmit to the county clerk of each county such general forms and instructions, in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in assessing, charging and collecting, and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions.

§ 12. MAY REMIT TAX PENALTIES.] The auditor is hereby authorized to remit any penalty for the non-payment of taxes when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may from time to time correct all errors which he shall discover in the duplicate of taxes assessed in any county.

§ 13. STATEMENT OF RAILROAD ASSESSMENTS.] The auditor shall, on or before the first Monday in September in each year, transmit to the territorial treasurer a statement of the assessments made by him on the returns of the property of any railroad or other corporation required by law to make such returns, and on which the taxes cannot be properly levied and collected by any organized county, or on which it becomes the duty of the territorial treasurer to levy and collect the taxes.

§ 14. CERTAIN EXPENSES PAID OUT OF CONTINGENT FUND.] The expense of procuring books directed by this act to be procured, and the copies of entries, surveys, and other documents from the land offices, and all other contingent expenses of his office, shall be paid by the auditor out of the contingent fund appropriated for the use of said office.

§ 15. PROCEEDINGS ON DEFAULT OF OFFICERS TO PAY OVER REVENUE.] If any officer concerned in the collection of the territorial revenue shall fail to collect, to make proper return, to make settlement, or to pay over all moneys by him received and belonging to the territory at the time and in the manner required by law, the auditor of the territory shall, after the expiration of fifteen days next after the expiration of the time within which such are by law required to be performed, transmit to the county clerk of the proper county a statement of the sum claimed by the territory from such delinquent officer, with directions for such county clerk to proceed against such delinquent officer and his securities in the manner prescribed by law: *Provided*, That when the auditor of the territory shall be satisfied that such default results from some inevitable accident, and not from the negligence of such officer, he may, at his discretion, postpone the instructions for bringing suit for any time not exceeding sixty days.

§ 16. MAY ADMINISTER CERTAIN OATHS.] The auditor is authorized to administer an oath to accountants and witnesses, in support of the justice of such accounts as may be exhibited to him for liquidation, and to certify the same accordingly.

CHAPTER 8.

TERRITORIAL TREASURER.

§ 1. TERRITORIAL TREASURER APPOINTED BY GOVERNOR.] There shall be nominated by the governor, and by and with the consent of the council, shall be appointed a territorial treasurer who shall hold his office for the term of two years and until his successor is appointed and qualified.

§ 2. CHARGE AND PAYMENT OF PUBLIC FUNDS.] He shall have charge of and safely keep all public moneys which shall be paid into the territorial treasury and pay out the same as directed by law, and perform all such other duties as now are, or may hereafter be, required of him by law.

§ 3. ACCOUNTS OF RECEIPTS AND PAYMENTS.] He shall keep an accurate account of the receipts and disbursements of the treasury, in books provided for that purpose at the expense of the territory, in which he shall specify the names of persons from whom received, to whom paid, on what account the same is received or paid out, and the time of such receipt or payment.

§ 4. ACCOUNT WITH EACH COUNTY.] He shall also keep an account with each organized county of the territory in which each county shall be charged with the amount of the tax levied, according to the statements of assessment and levy transmitted to him by the territorial auditor, and credited by the amounts received from the county treasurer of such counties.

§ 5. WARRANTS RECEIVABLE FOR PUBLIC DUES.] He shall receive in payment for public dues the warrants drawn by the auditor of the territory, in conformity with law, or redeem the same, if there be money in the treasury appropriated for that purpose, and on redeeming such warrant, or receiving the same in payment, he shall cause the person presenting such warrant to endorse the same; and the treasurer shall write on the face of the same "redeemed," and shall enter in his book, in separate columns, the number of such warrant, its date, amount, and the name of the person to whom payable, the date of payment, and the amount of interest, if any, paid thereon.

§ 6. INDORSEMENTS OF WARRANTS NOT PAID.] When any warrant shall be presented to the treasurer for redemption, and there shall be no funds in the treasury appropriated for that purpose, the treasurer of the territory shall indorse thereon the date of its presentation, with his signature thereto, and whenever there shall be funds in the treasury for the redemption of warrants so presented and indorsed, the treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice, the interest on such warrant shall cease.

§ 7. REDEEMED WARRANTS RETURNED TO AUDITOR.] He shall, on the last day of March, June, September and November, deposit in the office of the auditor of the territory, all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor.

§ 8. BIENNIAL REPORT TO GOVERNOR.] He shall submit to the governor, on or before the 15th day of December preceding each regular session of the legislative assembly, a report containing a full and true exhibit of the state of the public accounts and funds, the amount by him received, the amount paid out during the preceding fiscal term ending on the 30th day of November, and the balance remaining in the treasury, together with an exhibit of the several organized counties as provided in section 4 of this chapter, which report shall by the governor be transmitted to the legislative assembly.

§ 9. LEGISLATIVE INSPECTION OF ACCOUNTS.] He shall, as often as required, submit his books, accounts, vouchers, and the funds in the treasury, to the inspection of either branch of the legislative assembly, or any committee thereof appointed for that purpose.

§ 10. MUST NOT PURCHASE WARRANTS OR ACCOUNTS.] He shall, in no case, purchase or receive any warrant redeemable at the treasury, or any audited account, at a less value than is expressed therein; nor shall he receive any fee or reward, aside from his annual salary for transacting any business connected with the duties of his office.

§ 11. TREASURER TO ASSESS AND COLLECT CERTAIN RAILROAD TAXES.] He shall assess upon and collect the territorial tax from all railroads where the same pass through any unorganized county, or where, for any cause, the said tax shall not have been assessed and collected on any railroad; and such tax may be assessed and collected at any time from the first day of January to the 31st day of December; and shall receive for his services five per centum of such taxes so assessed and collected, and shall transmit to the county treasurer of any county, in which such tax shall have been collected, a statement of the amount of such tax, which shall be subject to the order of the said county treasurer.

§ 12. RESPONSIBILITY FOR DELINQUENCIES.] If, in any instance, the treasurer shall neglect to call to account any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes, the same as if the funds had actually been paid into his office.

CHAPTER 9.

TERRITORIAL LIBRARY.

§ 1. SECRETARY'S CUSTODY OF LIBRARY.] The territorial library, including statutes, reports, documents and miscellaneous books of every nature and description belonging to said library is hereby placed in the care and custody of the secretary of the territory, whose duty it shall be to provide a room for said library and keep the same open at all reasonable hours for the benefit of the public; to label and arrange the books in a convenient manner; to collect in all books now out, and to let no book go out without first taking the receipt of the person to whom such book is delivered.

§ 2. APPROPRIATION FOR SAME.] There is hereby appropriated the sum of two hundred and fifty dollars annually out of the territorial treasury to be paid out of any money not otherwise appropriated to the secretary of the territory to be disbursed by him for the care and custody of said library and for rent of room.

§ 3. AUDITING OF ACCOUNTS.] It shall be the duty of the territorial auditor to audit all accounts presented to him by the secretary of the territory, when properly verified, and draw his warrants on the territorial treasurer for the same, for all money paid out by the secretary as express charges or freight on books donated and sent to the territorial library from abroad.

CHAPTER 10.

TERMS OF SUPREME COURT.

§ 1. TWO TERMS ANNUALLY AT YANKTON.] There shall be held, at Yankton, two terms annually of the supreme court, commencing the fourth Tuesday of June and the second Tuesday of December.

CHAPTER 11.

ASSIGNMENT OF JUDGES OF SUPREME COURT.

§ 1. ASSIGNMMENT OF JUDGES.] The justices of the supreme court are assigned as follows:

1. The Honorable G. G. Bennett, associate justice, and his successors in office, to the first judicial district.

2. The Honorable P. C. Shannon, chief justice, and his successors in office, to the second judicial district.

3. The Honorable A. H. Barnes, associate justice, and his successors in office, to the third judicial district.

§ 2. JUSTICES HOLD COURT IN ANY DISTRICT.] The justices of the supreme court may also, at their pleasure, hold terms of court in any of the several judicial districts, other than those to which they are herein assigned.

§ 3. DUTY OF JUSTICES TO HOLD COURT IN OTHER DISTRICTS.] It is hereby made the duty of the several judges, when not otherwise officially engaged, to hold terms of court in districts other than those to which they are assigned, and to hear and determine all matters at chambers from such other districts, when the judge of such other district shall be, from any cause whatever, unable to act, or in case of temporary vacancy.

CHAPTER 12.

BOUNDARIES OF JUDICIAL DISTRICTS.

§ 1. BOUNDARIES JUDICIAL DISTRICTS—CONTINGENT CHANGE.] The territory is divided into three judicial districts, as follows:

1. The counties of Clay, Union, Lincoln, Minnehaha, McCook, Moody, Lake, Brookings, Wood, Duel, Hamlin, Clark, Grant, Greeley and Stone, and the Sisseton and Wahpeton Indian reservations constitute the first district.

2. All that portion bounded and described as follows, viz: Commencing at the northeast corner of the Sisseton and Wahpeton Indian reservation; thence along the north line of said reservation to the northwest corner thereof; thence southerly along the western boundary of said reservation to its intersection with the 46th parallel of north latitude; thence west along said parallel to the right bank of the Missouri river at low water mark; thence down along said right bank at low water mark to the mouth of Grand river; thence up the center of the main channel of Grand river to the mouth of Ree river; thence up the main channel of Ree river to its point of intersection with the one hundred and third meridian of west longitude; thence due west to the Little Missouri river; thence up the main channel of the Little Missouri river to the western boundary of the territory; thence north along the western boundary of the territory to the northern boundary thereof; thence east along the northern boundary of said territory to the northeast corner of said territory; thence southerly along the eastern boundary of said territory to the place of beginning, constitutes the third district.

3. All that portion of the territory not embraced within the bounds of the first and third districts as herein defined, constitutes the second district; *Provided, however*, That if the congress of the United States shall ratify the agreement with the Sioux Indians ceding the Black Hills, then and immediately thereafter the judicial districts of this territory shall be as follows, and the courts of the said districts shall be held as hereinafter provided:

1. All that portion of the territory of Dakota west of the right bank of the Missouri river at low water mark, and south of the forty-sixth parallel of latitude, except the counties of Todd, Gregory, Lyman and Presho, and so much of Boreman county as lies south of Grand river shall constitute the first judicial district.

2. All that portion of this territory north of the forty-sixth parallel of latitude, and so much of Boreman county as lies north of Grand river shall constitute the third judicial district.

3. All that portion of this territory not embraced in the first or third judicial districts shall constitute the second judicial district.

4. The district court in and for the third judicial district shall be held at Bismarck, in the county of Burleigh, on the third Tuesday of April and the second Tuesday of October in each year; and the district court within and for the first judicial district shall be held at the county seat of Pennington county, on the fourth Tuesday of May and the second Tuesday of September in each year; and the district court in and for the second judicial district shall be held at Yankton, in the county of Yankton, on the second Tuesday of March and November of each year.

§ 2. CERTAIN COURTS HAVE UNITED STATES JURISDICTION.] The district courts in and for the counties of Clay, Yankton and Cass shall have and exercise the powers and jurisdiction appertaining to the district and circuit courts of the United States in and for the several judicial districts in which they are respectively located.

CHAPTER 13.

SUBDIVISION OF JUDICIAL DISTRICTS.

§ 1. FIRST DISTRICT SUBDIVIDED.] The first judicial district is subdivided as follows:

1. The county of Clay constitutes one subdivision, and the district court shall be held therein on the first Tuesdays of February and November.

2. The county of Union constitutes one subdivision, and the district court shall be held therein on the first Tuesday of June and the first Tuesday of December; and in addition thereto special terms shall be held therein on the second Tuesdays of March and August.

3. The county of Lincoln constitutes one subdivision, and the district court shall be held therein on the first Tuesdays of April and October: *Provided, however*, That no April term shall be held therein except upon the request of the board of commissioners for said county.

4. The counties of Minnehaha and Lake constitute one subdivision, and the district court shall be held therein on the third Tuesday of May, in each year, at the county seat of Minnehaha county, and the county of Lake shall furnish a proportionate share of the jurymen for said court, and pay the same, but shall pay no other expense of said court unless there shall be at any term of said court business in said court from said county of Lake, in which event said county of Lake shall pay her proportionate share of the expenses of said court as provided by this act.

5. The remainder of the first judicial district not included within the preceding subdivisions constitute one subdivision, and the district court shall be held therein on the first Tuesday of May, at the county seat of Moody county: *Provided, however*, That such term shall not be held except upon the order of the judge thereof.

§ 2. SECOND DISTRICT SUBDIVIDED.] The second judicial district is subdivided as follows:

1. The county of Bon Homme constitutes one subdivision, and the district court shall be held therein on the third Tuesdays of March and September.

2. The county of Turner constitutes one subdivision, and the district court shall be held therein on the first Tuesday of June.

3. The counties of Hutchinson, Armstrong, Hanson and Davison constitute one subdivision and one term of the district court shall be held therein each year at such time and place as the judge shall appoint.

4. The county of Yankton and all other portions of said second judicial district not included in any of the preceding subdivisions constitute one subdivision, and the district court shall be held therein at the county seat of Yankton county on the second Tuesdays of April and October; and, in addition thereto, special terms shall be held at said county seat on the first Mondays of January, March, May, July, September, and November.

§ 3. THIRD DISTRICT SUBDIVIDED.] The third judicial district is subdivided as follows:

1. The counties of Cass, Stutsman, Richland, Ransom, Lamoure, Traill, Grand Forks, Pembina, Barnes, Foster, Ramsey, Cavalier, Gingras, French, and Rolette, constitute one subdivision, and the district court shall be held therein at the county seat of Cass county, on the fourth Tuesday of May and the first Tuesday of September.

2. All the remaining portions of said third judicial district constitute one subdivision, and the district court shall be held therein at the county seat of Burleigh county on the second Tuesday of May and the third Tuesday of September.

§ 4. COURTS HELD AT COUNTY SEATS.] The terms of the district courts for subdivisions composed of a single county only shall be held at their respective county seats.

§ 5. JUDGES MAY APPOINT TERMS.] The judges of the district courts respectively have the authority at any time to appoint by an order to that effect, courts to be holden in any county of a subdivision composed of two or more counties, and, from the time of the making of such order, such county wherein courts are so appointed, shall cease to be a part of the subdivision as herein provided, and shall itself constitute a subdivision, and the district courts shall be therein held at the times provided in such order.

§ 6. SHERIFF SERVES PROCESS THROUGHOUT SUBDIVISION.] In subdivisions composed of two or more counties, the sheriff of the county where the court is held shall have authority to execute all proper process in any county or other place embraced within such subdivision, the same as if such subdivision were composed of his county only.

§ 7. METHOD PAYING COURT EXPENSES IN SUBDIVISIONS.] For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the county clerks of the organized counties therein shall, annually, as soon as the assessment roll is received, transmit to the clerk of the court of that county wherein the court is held, a statement of the aggregate amount of the assessment roll of their counties respectively; and at the close of each term of the district court the clerk thereof shall, under the supervision of the judge, calculate the expenses of such term and the proportionate amount to be paid by each organized county, according to the proportion which the amount of the assessment roll bears to the aggregate amount of all the assessment rolls in such subdivision; and shall certify to the boards of county commissioners of the respective counties, accounts for such proportionate amounts, and in favor of the persons to whom such expenses shall be due, which accounts shall be audited and allowed and warrants issued accordingly, in like manner as other claims against a county.

§ 8. COURT MAY COMPEL COUNTIES.] If any county shall fail to furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge of the district court may fix the proportionate amount of the expenses of the court which such county shall pay, and may at any time, by mandamus, compel the assessment, and levy of a tax, or the doing of any other act necessary to carry out the provisions of this chapter.

§ 9. ADDITIONAL TERMS OF COURT—PROVISION FOR BLACK HILLS COUNTIES.] The judges of the district courts respectively shall have the power, whenever thereunto requested by the board of commissioners of the county wherein terms of court are regularly holden, by an order to that effect, to appoint and hold additional terms of the district court in any county or subdivision; and such judges shall have the power to adjourn the courts from time to time, as they shall deem expedient for the due administration of justice. The courts herein appointed shall continue as long as the business therein shall require: *Provided, however*, that if the congress of the United States shall ratify the agreement with the Sioux Indians ceding the Black Hills then immediately thereafter, the first judicial district as herein provided shall become a part of the second judicial district, and the district courts of the counties above named shall be held at the time and places herein provided, and the first judicial district shall be subdivided as follows: The county of Lawrence shall constitute one subdivision, and the district court shall be therein held on the first Tuesdays of June, and October, of each year. The counties of Custer and Pennington shall constitute one subdivision, and the district court shall be therein held on the fourth Tuesday of May and the second Tuesday of September in each year.

CHAPTER 14.

CLERK OF DISTRICT COURTS.

§ 1. JUDGES APPOINT CLERKS.] The judges of the district courts respectively shall have the power to appoint a clerk of the district court in each of the counties of his district, who shall be a resident of the district and a qualified voter thereof, who shall procure and keep a seal of the court for that county, and when courts are appointed therein shall perform all duties pertaining to that office, and shall keep his office at the county seat of his county.

§ 2. CLERK RESPONSIBLE ON BOND FOR NEGLECT.] Any person who may, at any time, be injured or aggrieved by reason of the violation of the duties of his office, on the part of any such clerk of the district court, or by any willful neglect or refusal to perform any of the duties pertaining to the office of clerk of the district courts, as the same are or may be prescribed by law, may institute legal proceedings upon the bond of such clerk, and collect thereon double the amount of damages actually sustained by such aggrieved person, which suit may be brought before any court having competent jurisdiction, and the county treasurer is also authorized and required for every such violation or neglect of duty, to collect a fine of not less than fifty dollars for any such violation of duty, or refusal or neglect on the part of said clerk of the district court.

§ 3. MUST PERFORM DUTIES.] It shall be the duty of the clerk of the district court to perform all duties which are or may be assigned him by law, and the rules of the court of which he is clerk, made in pursuance of the statute in such case provided.

§ 4. DEPUTY ACTS IN ABSENCE OF CLERK.] In the absence of the clerk of the district court from his office, or from the court, the deputy, appointed in pursuance of law, may perform all the duties pertaining to the office.

§ 5. CLERK MAY ADJOURN TERM, OR JUDGE DO SO BY WRITTEN ORDER.] The clerk of any district court, whenever the judge, whose duty it may be to preside therein, is hindered or delayed from any cause, from being at the place of holding the same, on the first, second or third day of the term thereof, is hereby authorized to adjourn said court from day to day, until the fourth day of said term, then if said judge does not appear and take his seat to preside therein, and the clerk does not receive a written order of adjournment, the clerk aforesaid shall adjourn said court without day; but the justice may, by written order to the clerk, have an adjournment of any term of court within the four days as aforesaid, to such other time as he may therein appoint; and such adjourned term shall be considered as a regular term for all lawful purposes whatever.

CHAPTER 15.

DISTRICT ATTORNEY.

§ 1. ATTORNEY FOR EACH JUDICIAL DISTRICT AFTER 1878.] There shall be elected at the general election in 1878, and biennially thereafter, in each judicial district, a district attorney, who shall be a resident of the district for which he shall be elected, and shall hold his office for the term of two years, and until his successor shall have been elected and qualified, and from and after the election and qualification of such district attorneys, the office of county district attorney shall cease, and said county district attorneys shall transfer and turn over to the district attorneys for the districts in which their counties are severally included, all official business in their hands.

§ 2. DUTIES OF DISTRICT ATTORNEYS.] It shall be the duty of the district attorneys of the several judicial districts, to appear in the district courts of their respective districts, and prosecute or defend on behalf of the counties in his district or of the territory, all suits, indictments, applications, motions or special proceedings, civil or criminal, in which the territory or any county in his district is interested as a party.

§ 3. TO RECEIVE ONLY LAWFUL FEES.] No district attorney shall receive any fee or reward for services in any prosecution or business to which it shall be his duty to attend other than what is or may be provided by law.

§ 4. VACANCIES FILLED BY GOVERNOR.] In case the office of district attorney shall become vacant by death, resignation, or otherwise, or in case the person elected to the office shall fail or refuse to qualify, the governor shall forthwith appoint some suitable person to be district attorney until the next general election.

CHAPTER 16.

COMMISSIONERS.

§ 1. GOVERNOR MAY APPOINT—POWERS.] The governor shall have power to appoint one or more commissioners in any state of the United States, or of the territories belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed, or other conveyance, or lease of any lands lying in this territory, and of any contract, letter of attorney, or any other writing under seal or not, to be used or recorded in this territory.

§ 2. COMMISSIONER MUST HAVE SEAL.] Each commissioner so appointed as herein provided shall have an official seal on which shall be engraved the words "Commissioner of Dakota Territory," with his surname at length, and at least the initials of his christian name; also the name of the state or territory in which he has been commissioned to act, which seal must be so engraved as to make a clear impression on wax or wafer.

§ 3. ACKNOWLEDGMENTS VALID.] All acknowledgments and proofs as herein provided, taken according to the laws of this territory and certified to by such commissioner under his seal of office, and annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this territory.

§ 4. MAY ADMINISTER OATHS AND TAKE DEPOSITIONS.] Every commissioner, appointed as before mentioned, shall have power to administer an oath which may be lawfully required in this territory to any person willing to take the same, and to take and duly certify all depositions to be used in any of the courts of this territory in conformity to the laws thereof, either on interrogatories proposed under a commission from any court of this territory, or by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a proper officer in this territory.

§ 5. QUALIFICATION, OATH AND SEAL.] Every such commissioner, before performing any duty, or exercising any power by virtue of his appointment, must take and subscribe an oath or affirmation before a judge or clerk of some court of record, having a seal of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the territory of Dakota, with a description and impression of his seal of office, must be filed in the office of the secretary of this territory.

CHAPTER 17.
NOTARIES PUBLIC.

§ 1. GOVERNOR APPOINTS—TERM—TERRITORIAL JURISDICTION.] The governor shall appoint in each of the organized counties in this territory from among the eligible citizens thereof, one or more notaries public, who shall be considered territorial officers, and shall hold their office for the term of four years, unless sooner removed by the governor, and who shall have power to act by virtue of their office within the territory.

§ 2. QUALIFICATION, OATH AND BOND.] Each and every notary public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States and the act organizing this territory, and to faithfully and impartially discharge the duties of his said office, and shall give bond to the people of the territory, to be approved by the clerk of the district court of his county, or judicial subdivision, with one or more sureties, in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of his said office.

§ 3. VACANCY—RECORDS DEPOSITED WITH CLERK DISTRICT COURT.] Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the district court in the county in which the said notary public resides; and any notary public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office, as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars: and if any executor or administrator of any deceased notary public shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office, for the space of three months after said records and papers shall come into his possession, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any person shall knowingly destroy, deface, or conceal any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars, and shall be moreover liable to an action by the party injured.

§ 4. PROTEST OF BILLS AND NOTES.] It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker, and each and every indorser of a bill of exchange, and to the maker or makers of, and each and every security or indorser of any promissory note or other written instrument, immediately after such protest shall have been made.

§ 5. SERVICE OF NOTICE OF PROTEST.] It shall be the duty of every notary public personally to serve the notice upon the person or persons protested against; in case the person cannot be found, said notary public shall serve notice of protest by leaving a copy of the same at the last and usual place of abode of said person or persons: *Provided*, He or they reside within two miles of the residence of such notary public; but if such person or persons reside more than two miles from such residence, the said notice may be forwarded by mail or other safe conveyance.

§ 6. RECORD OF NOTICES AND COPY EVIDENCE.] Each and every notary public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record, or a copy thereof certified by the notary under seal, shall at all times be competent evidence to prove such notice in any trial, before any court in this territory. where proof of such notice may become requisite.

§ 7. CLERKS OF COURT TO RECEIVE AND KEEP RECORDS.] It shall be the duty of the several clerks of the district courts to receive and keep safe all the records and papers directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by the said clerk are hereby declared to be as valid as if the same had been given by the said notaries public. All forfeitures under this act shall be, one half to the use of this territory, and the other half to him or them who shall sue for the same; to be recovered in a civil action, in any court having jurisdiction of the same in the county where such notary public shall reside.

§ 8. NOTARIAL SEAL—IMPRESSION OF SAME.] Every notary public, before he enters upon the duties of his office, shall provide an official seal and deposit an impression of the same, together with said oath and bond, in the office of the secretary of the territory.

§ 9. COMMISSION RECORDED BY CLERK.] Upon the commission, each notary shall affix his official signature and seal, and file the same for record with the clerk of the district court of his county or subdivision, who shall record the same in a book kept for that purpose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force.

§ 10. REVOCATION TO BE NOTICED TO CLERK.] Should the commission of any person so appointed be revoked, the secretary shall immediately notify such person, and the clerk of the district court of the proper county or subdivision, through the mail.

§ 11. FULL CREDIT TO NOTARIAL ACTS.] Full faith and credit shall be given to all the protestations, attestations and other instruments of publication of all notaries public now in office, or hereafter to be appointed under the provisions of this chapter.

CHAPTER 18.

ATTORNEYS AND COUNSELORS AT LAW.

§ 1. WHO MAY BE LICENSED TO PRACTICE AS ATTORNEYS.] All persons who, by the laws heretofore in force, were permitted to practice as attorneys and counselors at law, may continue to practice as such; and, hereafter, any person twenty-one years of age, who is an inhabitant of this territory, who satisfies any court of record, either on examination or by certificate of admission from any other territory or state, that he possesses the requisite learning, and is of good moral character, may, by such court, be licensed to practice as an attorney and counselor; *Provided*, That no person shall be admitted to practice in the supreme court unless he shall have been first licensed to practice in some one of the district courts, or, on the presentation of a certificate of admission to practice in the supreme court of some other territory or state.

§ 2. OATH IN OPEN COURT.] Upon being admitted to practice as attorneys and counselors at law they shall, in open court, take the following oath:

> "You do solemnly swear that you will support, protect and defend the constitution of the United States and the organic act of the territory of Dakota; that you shall do no falsehood or consent that any be done in court, and if you know of any, you will give knowledge thereof to the judge of the court or some one of them, that it may be reformed; you shall not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you shall delay no man for lucre or malice, but shall act in the office of attorney in this court according to your best learning and discretion, with all good fidelity, as well to the court as to your client. So help you God."

§ 3. ATTORNEYS FROM OTHER STATES.] Any practicing attorney of another state, having professional business in the courts of this territory, may be admitted to practice therein upon taking the oath aforesaid.

§ 4. DUTIES OF AN ATTORNEY.] It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.

2. To counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.

3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

§ 5. PUNISHMENT FOR DECEIT.] An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, or judge, or party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

§ 6. POWER OF AN ATTORNEY.] An attorney and counselor has power:

1. To execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. To bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreem~~ent is~~ receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

§ 7. PROOF OF ATTORNEY'S AUTHORITY.] The court may, on motion, for either party, and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce, or prove by his oath or otherwise, the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

§ 8. ATTORNEY MUST NOT BE SURETY.] No practicing attorney and counselor shall be a surety in any suit or proceeding which may be instituted in any of the courts of this territory.

§ 9. LIEN FOR COMPENSATION.] An attorney has a lien for a general balance of compensation in and for each case upon:

1. Any papers belonging to his client, which have come into his hands in the course of his professional employment in the case for which the lien is claimed.

2. Money in his hands belonging to his client in the case.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such

adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment.

§ 10. LIEN RELEASED BY BOND.] Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the court, conditioned to pay the amount finally due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released, unless the attorney, within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered.

§ 11. COURT MAY REVOKE OR SUSPEND LICENSE.] Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defense.

§ 12. CAUSES FOR SUSPENSION.] The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is conclusive evidence.

2. When he is guilty of a willful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with, or in the course of, his profession.

3. For a willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. For doing any other act to which such a consequence is by law attached, or upon conviction for any of the offenses mentioned in sections 201, 202, 209 and 210 of the penal code.

§ 13. PROCEEDING TO REMOVE OR SUSPEND.] The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it.

§ 14. ACCUSATION—HOW ANSWERED.] To the accusation he may plead or demur, and the issues joined thereon shall, in all cases, be tried by the court, all the evidence being reduced to writing, filed and preserved.

§ 15. JUDGMENT ON PLEA OF GUILTY.] If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires.

§ 16. APPEAL FROM JUDGMENT.] In case of removal or suspension being ordered by a district court an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by the district court is final.

§ 17. REFUSAL TO PAY OVER MONEY.] An attorney who receives the money or property of his client in the course of his professional business and refuses to pay or deliver it in a reasonable time after demand, is guilty of a misdemeanor.

§ 18. NO PENALTY UNLESS LIEN SECURED.] When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section until the person demanding the money or property proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained.

§ 19. NO LIABILTY IF SECURITY GIVEN.] Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole, or any portion thereof, to the claimant when he is found entitled thereto.

CHAPTER 19.

JURORS.

§ 1. QUALIFICATION OF JURORS.] All male citizens residing in any of the counties of this territory having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, licensed attorneys engaged in the practice, or jailors, and not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability for the commission of any offense, which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries within their counties or subdivisions respectively: *Provided*, That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, registers of deeds, practicing physicians, postmasters and carriers of the United States mail, shall not be compelled to serve as jurors.

§ 2. TWO HUNDRED NAMES FROM LAST TAX LIST.] In each of the counties wherein a district court is appointed or directed to be holden, two hundred names of qualified persons shall be selected from the last annual tax list, and furnished to the clerks of the district courts by the county commissioners from which to draw the grand and petit jurors; and such number shall at all times be kept full by completing the number after each term of court when a jury or juries have been drawn and summoned, and at the end of each term of the district court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn, so as to keep the said number of two hundred full; and such county commissioners shall, at their first meeting after receiving such requisition, furnish such number of names, so selected, of persons so qualified, to complete and keep full such number of two hundred: *Provided*, That upon discovery by the court or county commissioners of the name of any person who is a non-resident or disqualified, they shall withdraw such name.

§ 3. HOW DRAWN IN SUBDIVISIONS.] To enable juries to be drawn and summoned in those subdivisions composed of two or more counties, the county clerks of all the organized counties therein shall, as soon as the assessment roll is returned, and yearly thereafter, furnish to the clerk of the district court of that subdivision the aggregate number of names appearing upon the assessment roll of their counties respectively, if such county shall have such assessment roll, and the clerk of such district court shall thereupon and yearly thereafter make requisition upon the county commissioners for the proportionate number of names to be furnished by each county of the subdivision respectively to make up the number of two hundred, each county to furnish such proportion as the number of names upon their assessment roll bears to the aggregate of all the assessment rolls of the counties of such subdivision, and thereupon from time to time as such requisition shall be made the county commissioners shall furnish the required number of names, and from the two hundred names so furnished the grand and petit juries shall be drawn by such district court clerk and sheriff of the county where the court is held, by lot as herein provided.

§ 4. WHEN COUNTY FAILS.] If one or more counties shall fail to furnish their proportionate, or any number of names, such juries shall be drawn from those names that shall be furnished, and the judges of the district courts respectively are authorized and empowered to make any rule or order that shall be by them deemed necessary, or to cause any act or thing to be done to affect the drawing or summoning of either a grand or petit jury from such subdivision, and shall at any time have the power to cause a jury, either grand or petit, to be summoned for such district court from the body of such subdivision, and no omission of any act altogether, or the failure to perform it within the time herein prescribed shall be cause of challenge of any individual juror or to the panel.

§ 5. JURY SUMMONED ONLY ON ORDER OF DISTRICT COURT.] No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of said court that a jury shall be summoned, and in such order shall specify the number of petit jurors that shall be summoned, and the time and place where they shall appear; and such order may be issued at any time within ten days before the first day of the term of the district court, or at any time during the term of said court.

§ 6. GRAND JURY HOW SUMMONED.] A grand jury shall be summoned in the same manner provided for summoning petit juries: *Provided*, That in all cases a grand jury shall consist of not less than sixteen jurors.

§ 7. CLERK PUTS NAMES ON TICKETS.] The clerk or deputy clerk receiving the names from the county commissioners as herein provided shall write the name of each person selected on a separate ticket and place the whole number of tickets in a box or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners in the files of his office.

§ 8. CLERK AND SHERIFF DRAW JURORS BY LOT.] The clerk of the district court, or his deputy, and the sheriff or his deputy, or, if there be no sheriff, or, in case of his disability or suspension from office, the coroner shall immediately upon or within two days from the receipt of the order directing a jury to be summoned, meet together and draw by lot out of the box or receptacle wherein shall be kept the tickets aforesaid, the number of jurors directed to be summoned by the judge of the district court. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder drawn in compliance with said order shall serve as petit jurors.

§ 9. CLERK ISSUES VENIRES.] The clerk shall, on the day of the drawing as herein provided, issue a venire, or venires, as the case may be, directed to the proper officer of the counties respectively from which the jurors are drawn, commanding such officer to summon the persons whose names are drawn, to appear before the district court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury shall be ordered.

§ 10. VENIRE HOW SERVED.] The officer receiving such venire shall forthwith serve the same, by reading or delivering a true copy thereof to each person therein named, or by leaving such a copy at his usual place of residence ; such copy need contain only the name of the juror served ; and shall make return thereof, with his proceedings indorsed thereon, to the clerk as soon as he has executed the same.

§ 11. JUROR MUST APPEAR.] Each grand and petit juror summoned shall appear before the court on the day and at the hour specified in the summons and shall not depart without leave of court.

§ 12. COURT MAY ORDER JURY FORTHWITH.] If all persons summoned as grand and petit jurors do not appear before the court, or if for any cause the panel of the grand jurors or petit jurors is not complete, or if no jury be drawn as above provided, the court may order the sheriff, deputy sheriff or coroner, to summon without delay, good and lawful men having the qualifications of jurors, and the person or persons summoned shall forthwith appear before the court and if competent shall serve on the grand jury or petit jury, as the case may be, unless such person or persons may be excused from serving or lawfully challenged.

§ 13. SUMMONS TO COMPLETE SPECIAL PANEL.] Whenever the panel of petit jurors shall be exhausted by the challenges of either party, in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner, to summon without delay, a sufficient number of persons possessing the qualifications of jurors as before provided to complete the number requisite for a jury in that particular case.

§ 14. CITIZENS MUST BE SELECTED IN ROTATION.] It shall be the duty of the county commissioners in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors, so to select and arrange that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation according to the best information that can be obtained.

§ 15. FAILURE TO APPEAR PUNISHABLE.] If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court and may be fined by the court in any sum not less than five nor more than fifty dollars, and if any person when a second order of attachment is issued, neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail, and if the county commissioners of any county willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five nor more than fifty dollars, and if the clerk of the district court, or deputy clerk, or sheriff, deputy sheriff or coroner, so neglect or fail to perform the duties imposed by this act, the persons so offending shall be considered guilty of contempt of court and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this act, may be imprisoned by the court not longer than thirty days in the county jail.

CHAPTER 20.

ADMINISTRATION OF OATHS.

§ 1. OFFICERS AUTHORIZED TO ADMINISTER OATHS.] The following officers are authorized to administer oaths:

Each justice of the supreme court;

Clerks of the supreme and district courts and their deputies within their respective counties;

County clerks and their deputies, and county commissioners within their respective counties;

Judges of the probate court, justices of the peace and notaries public within their respective counties.

Each sheriff and his deputies, in cases where they are authorized by law to select commissioners or appraisers, or to empanel juries for the view or appraisement of property; or are directed as an official duty to have property appraised, or take the answers of garnishees.

§ 2. PERSONS MAY AFFIRM. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing.

CHAPTER 21.

COUNTIES AND COUNTY OFFICERS.

ORGANIZATION OF COUNTIES.

§ 1. FIFTY VOTERS TO ORGANIZE COUNTY.] Whenever the voters of any unorganized county in this territory shall be equal to fifty or upwards, and they shall desire to have said county organized, they may petition the Governor, setting forth that they have the requisite number of voters form a county organization, and request him to appoint the officers specified in the next section of this act.

§ 2. PETITION TO GOVERNOR AND APPOINTMENTS.] Whenever the voters of any unorganized county in the territory shall petition the governor, as provided in the preceding section, and the said governor shall be satisfied that such county has fifty legal voters, it shall be the duty of the governor, and he is hereby authorized to appoint three persons, residents thereof, county commissioners for such county, who shall hold their office until the first general election thereafter, and until their successors shall be elected and qualified.

§ 3. COMMISSIONERS QUALIFY AND APPOINT OFFICERS.] Said county commissioners, after having qualified according to law, shall appoint all the county officers of said county required by law, who, after having qualified, shall hold their office until the next general election, and until their successors shall have been elected and qualified.

§ 4. COMMISSIONERS' DUTIES.] The county commissioners appointed under this act shall have the power to locate the county seat of such county temporarily, and shall divide the county into three commissioner districts, which shall be numbered from one to three, and said districts shall not be changed oftener than once in three years, and then only at the regular sessions in January, April or July, and one commissioner shall be elected from each of said districts at the next general election after such organization, one of whom shall be chosen for the term of one year, one for two years, and the third for three years, and one annually thereafter, as provided by law.

§ 5. ANNEXED TERRITORY PART OF COUNTY.] Such portions of the territory not organized into counties as are annexed to any organized county, shall for judicial and other purposes be deemed to be within the limits and a part of the county to which they are annexed.

LOCATION OF COUNTY SEATS.

§ 6. COUNTY SEAT LOCATED BY MAJORITY VOTE.] When any county shall be organized as herein provided, the qualified voters thereof are hereby empowered to select the place of the county seat by ballot at the first general election at which the county officers are chosen, and for this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed the place having the majority of all votes polled shall be the county seat, and public notice of said location shall be given within thirty days by the county commissioners, by posting up notices in three several places in each precinct in the county; and if no one place voted for shall have a majority of all the votes cast, the place as located temporarily by the county commissioners shall remain the county seat until changed as provided in the next section.

§ 7. COUNTY SEAT CHANGED BY TWO-THIRDS VOTE.] Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the county commissioners, signed by two-thirds of the qualified voters of the county, it shall be the duty of the said board, in the notices for the next general election, to notify said voters to designate upon their ballots, at said election, the place of their choice; and if, upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

§ 8. COUNTY SEAT ON PUBLIC LANDS.] Whenever any county seat shall be located upon the public lands, it shall be the duty of the county commissioners to enter or purchase a quarter section of land at the place so designated, at the expense of and for the use of the county, within three months thereafter, if said land be subject to private entry; if not, the board shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

§ 9. COMMISSIONERS TO SURVEY AND PLAT SAME.] The county commissioners shall, within three months after the selection, cause the same to be surveyed in town lots, squares, streets and alleys, and platted and recorded in pursuance of law, and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

§ 10. SURPLUS LOTS SOLD.] The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder, at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one-third cash and the balance on time, as the county commissioners may deem best, and they may dispose of lots at private sale upon terms as above provided.

§ 11. CERTIFICATE TO PURCHASER.] Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warranty deed from the county commissioners when payment in full shall be made for the same; any lots sold as above, that shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county and shall be again sold as herein provided.

§ 12. NET PROCEEDS PAID INTO TREASURY.] The proceeds of the sales of the aforesaid lots, after deducting the expenses of the surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county, at the county seat, and shall be used for no other purpose whatever.

CORPORATE POWERS AND LIABILITIES.

§ 13. COUNTY BODY CORPORATE—POWERS.] Each organized county is a body corporate for civil and political purposes only, and as such may sue and be sued, plead and be impleaded, in any court in this territory; and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold, and the purchase money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase money, shall be instituted in the name of the proper county.

§ 14. JUDGMENTS AGAINST, LIEN ON COUNTY PROPERTY.] When any judgment is obtained against the county, it shall be a lien upon the property of the county, and the public property shall be liable therefor; but no execution shall issue therein until the board of county commissioners shall have had six months time to assess and collect a sufficient amount of revenue, under the provisions of this chapter, to pay off and discharge said judgments, in addition to the ordinary expenses of the county.

OFFICERS.

§ 15. OFFICERS OF ORGANIZED COUNTIES—ELECTION.] Each organized county shall have the following officers, to wit: Three commissioners, who shall constitute the board of county commissioners, one register of deeds, one county clerk, one clerk of the district court, one sheriff, one assessor, one judge of the probate court, one county treasurer, one county surveyor, one coroner, one superintendent of public schools, four justices of the peace, and four constables, who shall possess the qualifications of electors; and shall be chosen by the qualified electors of their respective counties at the general election in the year 1878, and every two years thereafter, except commissioners (who shall be chosen as hereinafter provided), county clerk and clerk of the district court.

OF THE BOARD OF COUNTY COMMISSIONERS.

§ 16. COMMISSIONERS' TERMS, SUCCESSION AND DISTRICTS.] The commissioners shall hold their office for the term of three years, except as provided in the statute for the organization of counties, and one shall retire and one be chosen annually, and in counties now organized the order of their election and succession shall remain as now established, and commissioner districts in such counties shall continue as now constituted until changed as provided by law.

§ 17. COUNTY SEAL. The board of county commissioners hereby established shall procure and keep a seal with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk; and the impression of the seal, hereby required to be kept, by the stamp, shall be sufficient sealing in all cases where sealing is required.

§ 18. SESSIONS OF BOARD, TIME AND PLACE.] The county commissioners shall meet and hold sessions for the transaction of business at the court houses in their respective counties, or at the usual place of holding court, on the first Monday in January, April, July and October of each year, and may adjourn from time to time, and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county: *Provided*, That in case of a vacancy in the office of the register of deeds, the chairman of the board shall have power to call a special session for the purpose of filling the same.

§ 19. ELECTION OF CHAIRMAN OF BOARD.] At the first meeting of the county commissioners in each and every year, they shall elect one of their number chairman, who shall act as chairman of the board of said commissioners during the year in which he is elected, or until his successor is elected, and in case of a vacancy, from any cause whatever, the board of county commissioners shall elect another chairman.

§ 20. DUTIES OF CHAIRMAN.] It shall be the duty of the chairman of the board of county commissioners to preside at the meetings of said board, and all orders made by the board of county commissioners, and all warrants drawn on the county treasurer, shall be signed by the chairman and attested by the county clerk.

§ 21. TIE VOTE DEFERS DECISION.] When the board of county commissioners are equally divided on any question they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

§ 22. COPIES OF PROCEEDINGS EVIDENCE.] Copies of the proceedings of the board of county commissioners, duly certified and attested by the county clerk, under seal, shall be received as evidence in all courts of this territory.

§ 23. BOARD POWER TO PRESERVE ORDER.] The board of county commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fines not exceeding five dollars, orby imprisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by attachment or other compulsory process, and when fines are assessed by them the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines, within ten days after they are collected.

§ 24. BOARD TO KEEP ACCOUNT WITH TREASURER.] The said commissioners shall keep a distinct account with the treasurer of the county, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all warrants returned and cancelled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited on account; and the said board shall, in their settlement with the treasurer, keep the general, special and road tax separate, that any citizen of the county may see how the same is expended.

§ 25. BOARD SHALL KEEP RECORD.] They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

§ 26. RECORD AS TO BRIDGES AND ROADS.] They shall keep a book for the entry of all proceedings and adjudications relating to bridges and the establishment, change or discontinuance of roads.

§ 27. WARRANT REGISTER.] They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

§ 28. BOARD MAY PROSECUTE CIVIL ACTIONS.] They shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

§ 29. SPECIFIC POWERS OF BOARD.] They shall have power to make all orders respecting property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale and a deed is executed in the name of the county by the chairman of the board of commissioners, reciting the order, and signed and acknowledged by him for, and on behalf of the county: *Provided, however*, That the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as hereinafter provided, and sanctioned by a majority vote thereof.

2. They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness.

3. To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit.

4. To construct and repair bridges, and to open, lay out, vacate and change highways; to establish election precincts in their county and appoint the judges of election, and to equalize the assessment roll of their county, in the manner provided by law.

5. To furnish the necessary blank books, blanks and stationery for clerks of the district court, county clerk, register of deeds, county treasurer, and probate judge of their respective counties, to be paid out of the county treasury; also a fire proof safe, when in their judgment the same shall be deemed advisable, in which to keep all the books, records, vouchers and papers pertaining to the business of the board.

6. To do and perform such other duties and acts that boards of county commissioners are now or may hereafter be required by law to do and perform.

§ 30. SUPERINTENDENCE OF COUNTY AFFAIRS.] They shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts and expenditures of the county, and on the first Monday of July, annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their sessions, and at one public place in each precinct of the county.

§ 31. BOARD MAY PROCURE ORIGINAL FIELD NOTES.] Said board is authorized to procure for their county a copy of the field notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be constructed therefrom, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

§ 32. SUBMIT EXTRAORDINARY OUTLAY TO VOTE.] They shall submit to the people of the county, at any regular or special election, any question involving an extraordinary outlay of money by the county, or any expenditure greater in amount than can be provided for by the annual tax, or whether the county will construct any court house, jail or other public building, or aid or construct any road or bridge, and may aid any enterprise designed for the benefit of the county whenever a majority of the people thereof shall authorize the same as hereinafter provided.

§ 33. DEPRECIATED WARRANTS.] When county warrants are at a depreciated value, the said commissioners may, in a like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, or for constructing or ordering to be constructed any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

§ 34. MODE OF SUBMITTING PROPOSITIONS.] The mode of submitting questions to the people contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

§ 35. PROPOSITION TO TAX MUST ACCOMPANY.] When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a proposition to lay a tax for the payment thereof, in addition to the usual taxes under section fifteen of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

§ 36. SUCH TAX ANNUALLY NOT EXCEED THREE MILLS.] The rate of tax levied in pursuance of the last four sections of this chapter, shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue laws of this territory.

§ 37. RECORD OF VOTE—BOARD CANNOT RESCIND.] The said commissioners being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax, in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

§ 38. MONEY SPECIFICALLY APPLIED.] Money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged.

§ 39. WARRANTS, HOW SIGNED AND ATTESTED.] All warrants upon the county treasury shall be issued upon the order of the board of county commissioners, signed by the chairman thereof and attested by the signature of the county clerk with the county seal attached; and shall designate the fund upon which they are drawn.

§ 40. SESSIONS PUBLIC AT COUNTY SEAT.] They shall hold their sessions with open doors, and transact all business in the most public manner, and where the county has no court house, or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of commissioners in session only, but they may continue any business from any regular session to an intermediate day.

§ 41. WHAT CONSTITUTES RECORD.] The books required to be kept by this chapter shall constitute the record of the board of county commissioners.

§ 42. BOARD PROVIDES OFFICES, JAIL, COURT ROOM, &C..] In any county where there is no court house or jail erected by the county, it shall be the duty of the board of county commissioners to provide for court room, jail and offices for the several officers by law required to be furnished by such county, in a suitable building or buildings, for the lowest rent to be obtained, at the county seat; or to secure and occupy suitable rooms at a free rent within the limits of the county seat, or any of the additions thereto, until such county builds a court house. They shall also provide the courts appointed to be held therein with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

§ 43. POWER TO ERECT BUILDINGS FROM CURRENT REVENUE.] Said board shall have authority and power, under the provisions of this chapter, to provide for the erection and repairing of court houses, jails and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building or repairing of the same; but no expenditure, for the purpose herein named, greater than can be paid out of the annual revenue of the county for the current year, shall be made, unless the question of such expenditure shall have first been submitted to a vote of the qualified voters of such county, and shall have been approved by a majority of the votes so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose.

§ 44. DUTY TO USE BUILDING FUND.] After a building fund has been accumulated either from the proceeds of the sale of town lots, or from any other source, it shall be the duty of the board of county commissioners, within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings, including a jail, if such fund shall in the judgment of the board be sufficient for that purpose.

§ 45. CONTRACTS LET ONLY ON COMPETITIVE BIDS.] The board shall cause an advertisement for bids for the erection of such buildings, to be printed in some newspaper published in the county, for at least three months prior to the opening of the bids, and in such other newspaper in the territory and for such period as the board may deem advisable. Such advertisements shall state where the plans and specifications may be examined and the time allowed for the completion of such buildings, and when the bids will be opened and passed upon by the board, which must be at one of the regular sessions of the board, and must be public. The lowest responsible bid must in all cases be accepted, and the contracts for such buildings shall be so conditioned that not more than one-half the payment for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board. Said board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract, with approved security, for the performance of the work in accordance with the plans and specifications, in case his bid is accepted.

§ 46. APPEALS ALLOWED FROM DECISIONS OF BOARD.] From all decisions of the board of commissioners, upon matters properly before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court; said bonds shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein.

§ 47. APPEAL IN TWENTY DAYS, ON NOTICE.] Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall, upon the filing of the bond, and the payment of his fees, allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

§ 48. FILING OF APPEAL.] Said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term.

§ 49. TRIAL DE NOVO ON APPEAL.] All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo.*

§ 50. POWER OF DISTRICT COURT.] The district court may make a final judgment, and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by mandamus, or attachment as for contempt.

§ 51. OFFICIAL SETTLEMENTS REQUIRED PROMPTLY.] All treasurers, sheriffs, clerks, constables and other officers, chargeable with money belonging to any county, shall render their accounts to, and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

§ 52. PENALTY FOR NEGLECT TO DELIVER MONEY.] If any person thus chargeable shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent, according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor; and such delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county.

§ 53. COUNTY WARRANTS NOT PAID—INTEREST.] All county orders heretofore drawn, or that may hereafter be drawn, by the proper authorities of any county, shall, after having been presented to the county treasurer of the respective counties, and by him indorsed, "not paid for want of funds in the treasury," from said date draw interest at the rate of ten per cent. per annum.

§ 54. RECORD OF PROCEEDINGS TO BE PRINTED, OR POSTED.] It shall be the duty of the board of county commissioners of the several counties in this territory, to cause to be published in some newspaper printed in their respective counties, or, in case no newspaper be printed in their respective counties, then to be posted up in three public places in said county, one of which shall be posted up in the office of the county clerk, a full and complete report of all their official proceedings, of each regular and special meeting held; such proceedings to be so published or posted as soon after any meeting of the commissioners as practicable. And the board of county commissioners are hereby authorized to pay for such publication: *Provided,* That such payment shall not exceed the rate of one-half the amount authorized by law for publications of a legal character.

§ 55. COUNTY CLERK REPORTS PROCEEDINGS.] It is hereby made the duty of the county clerk to make out a full and complete report of the proceedings of each regular and special meeting of the board, and to transmit the same to the publisher of the newspaper selected by such board to publish such proceedings, said report to be made out and transmitted by such clerk within one week from the time such proceedings are had. Such clerk shall be allowed by the board a reasonable compensation for such service.

§ 56. PRINTED IN NEXT ISSUE OF PAPER.] It shall be the duty of the publisher of any newspaper selected to publish any proceedings of the board of commissioners of the several counties, to cause any proceedings as aforesaid, received by him from any county clerk, to be published in the issue of his paper next succeeding the time of their reception.

OF THE REGISTER OF DEEDS.

§ 57. INSTRUMENTS RECORDED—INDORSEMENTS AND FOOT-NOTES.] The register of deeds shall keep a full and true record, in proper books kept for that purpose, of all deeds, mortgages, bills of sale, chattel mortgages, and all other instruments, authorized by law to be admitted to record, filed with him for that purpose, provided the person so filing them for record shall first pay him the fees provided by law for recording the same. When an instrument is filed with him for record, he shall indorse thereon the date and hour and minute of the day of such filing, and, when recorded, also the pages and designating letters or numbers of the book of records in which the record thereof is made; and in a note at the foot of the record of each instrument of whatever kind recorded by him, he shall write the date of the hour and minute of the day when it was filed with him, and the numbers of the pages on which it is recorded.

§ 58. NUMERICAL INDEX REQUIRED.] The registers of deeds shall prepare from the records of their offices respectively, and shall hereafter keep a numerical index of the deeds, mortgages, and other instruments of record in their respective offices affecting or relating to the title to real property, in lieu of the indexes by names of grantors and grantees, as now kept.

§ 59. SEPARATE INDICES OF DEEDS AND LIENS—FORMS.] There shall be prepared and kept one index of the deeds and contracts and other instruments, not liens merely, and another index of the mortgages and other liens, which indexes shall be substantially, or as near as may be, in the following forms:—

FORM OF NUMERICAL INDEX TO CITY AND TOWN PROPERTY.

BLOCK NO. 1, IN....................................

No. of Lot.	Vol.	Page.	Vol.	Page	Vol.	Page	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1																		
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FORM OF SECTIONAL SYSTEM OF NUMERICAL INDEX TO REAL ESTATE.

TOWNSHIP NO. ...... RANGE NO. ...... SECTION NO. ......

No of Section.	Quarter Sec.	Part Qr. Sec.	Vol.	Page	Vol...	Page	Vol..	Page.	Vol...	Page.	Vol..	Page.	Vol...	Page.
1	NE	ne quarter												
		nw quarter												
		sw quarter												
		se quarter												
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§ 60. COMPENSATION FOR MAKING INDEX—CERTAIN COUNTIES EXCEPTED.] For the making and preparing of the index to the instruments now of record, the registers of deeds shall be allowed by the county commissioners, and paid out of the county treasury of their respective counties such just sum as shall be reasonable and proper, and for keeping such indexes hereafter they shall receive no compensation beyond their fees now allowed or that may hereafter be allowed for the recording of instruments—the indexing being a part of their duties in recording the instrument: *Provided, however*, That it shall be discretionary with the board of county commissioners of the counties of Union, Bon Homme, Minnehaha, Brookings, Burleigh and Clay, as to whether they will adopt the foregoing provisions relating to a numerical index.

OF THE COUNTY CLERK.

§ 61. REGISTER OF DEEDS IS COUNTY CLERK.] The register of deeds, and his deputies duly appointed, shall be *ex officio* county clerk and deputies thereof respectively; and he shall be liable on his official oath and bond as register of deeds for the due and faithful performance of the duties of county clerk.

§ 62. MUST KEEP RECORD OF BOARD.] The county clerk shall attend the sessions of the board of county commissioners, and keep a true and full record of their proceedings in books to be provided for that purpose.

§ 63. GENERAL DUTIES OF CLERK.] He shall do, perform and transact all county business without any extra or greater compensation than is allowed by law; and shall keep all the books required to be kept by the county commissioners; shall file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

§ 64. CLERK'S ELECTION DUTIES.] The county clerk shall perform all the duties required of him by law relative to the making out and delivering notices of special and general elections, making abstracts of and canvassing the votes cast at any special and general election, issuing certificates of election to members of the legislative assembly, county and precinct officers, and forwarding the abstracts of votes cast at general or special elections to the secretary of the territory.

OF THE SHERIFF.

§ 65. SHERIFF—GENERAL DUTIES.] The sheriff shall keep and preserve the peace within his county, for which purpose he is empowered to call to his aid such persons, or the power of his county, as he may deem necessary. He must also pursue and apprehend all felons; and must execute all writs, warrants, and other process from the district court, or from a justice of the peace, which shall be directed to him by legal authority. He shall attend at the district court, and the sessions of the board of county commissioners, when required by the latter to attend.

§ 66. MUST POST ELECTION NOTICES.] He shall serve or post up all notices he may receive from the county clerk or the board of county commissioners, give notice of special and general elections, and shall keep his office at the county seat.

OF THE CORONER.

§ 67. CORONER SUCCEEDS SHERIFF—WHEN.] When there shall be no sheriff or deputy sheriff in any organized county it shall be the duty of the coroner in such county to exercise all the powers and duties of that office until the same shall be filled as provided by law; and when the sheriff shall be committed to jail, or otherwise disqualified, the coroner shall be the keeper of the jail, and perform the duties of sheriff during the continuance thereof. When the sheriff is sued the coroner shall serve the papers on him, and his return on all papers served by him shall have the same credit as the sheriff's return; and he shall receive the same fees as the sheriff for like services.

§ 68. INQUESTS ON DEAD BY UNLAWFUL MEANS.] The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to the sheriff or any constable of his county, requiring him to summon forthwith three electors, having the qualifications of jurors of the county, to appear before the coroner at a time and place named in the warrant.

§ 69. WARRANT FOR JURORS.] That warrant may be in substance as follows:

TERRITORY OF DAKOTA, } ss.
........County. }

To the sheriff or any constable of said county:—In the name of the people of the territory of Dakota, you are hereby required to summon forthwith three electors, having the qualifications of jurors, of your county, to appear before me at (name the place,) at (name the day and hour, or say forthwith,) then and there to hold an inquest on the dead body of ......, there lying, and find by what means he died.

Witness my hand this...... day of.... 18...

A. B., Coroner of........county.

§ 70. COMPLETING JURY, AND OATH.] If any juror fails to appear, the coroner shall cause the proper number to be summoned and returned from the bystanders, immediately proceed to empanel them and administer the following oath, in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you.

§ 71. WITNESSES ATTENDANCE—CONTEMPTS.] The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the territory.

§ 72. OATH TO WITNESSES.] An oath shall be administered to the witnesses, in substance as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead shall be the truth, the whole truth, and nothing but the truth. So help you God.

§ 73. TESTIMONY SUBSCRIBED.] The testimony shall be reduced to writing under the coroner's order, and be subscribed by the witnesses.

§ 74. RETURN BY JURY—FORM.] The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

TERRITORY OF DAKOTA, } ss.
....County. }

An inquisition holden at..........................in....................county, territory aforesaid, on the............day of..............A. D. 18....before.................... coroner of the said county, upon the body of........................(or person unknown) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously)

In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid.

(Which shall be attested by the coroner.)

§ 75. CRIMINALS NAME NOT DISCLOSED.] If the inquisition find that a crime has been committed on the deceased, and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section.

§ 76. CORONER MAY ORDER ARREST.] If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace.

§ 77. MAY ISSUE WARRANT.] If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace.

§ 78. WARRANT RETURNABLE TO JUSTICE.] The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, the same proceedings shall be had as in other cases under complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases.

§ 79. WARRANT TO RECITE VERDICT.] The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice instead of a complaint.

§ 80. RETURN BY CORONER. The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testified material matter.

§ 81. DISPOSITION OF BODY; PAYMENT OF EXPENSES.] The coroner shall cause the body of a deceased person which he is called to view, to be delivered to his friends, if any there be; but if not, he shall cause him to be decently buried and the expense to be paid from any property found with his body: or, if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county.

§ 82. WHEN JUSTICE MAY ACT AS CORONER.] When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself by his warrant, and may proceed with him as a justice of the peace.

§ 83. PHYSICIANS MAY BE SUMMONED.] In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation instead of witness fees.

§ 84. DISPOSITION OF PROPERTY ON BODY.] The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

§ 85. TREASURER'S DUTY WITH PROPERTY.] Upon the delivery of money to the treasurer, he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

§ 86. MONEY WHEN AND HOW PAID.] If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners or supervisors.

§ 87. STATEMENT BY CORONER.] Before auditing and allowing the account of the coroner, the board of county commissioners must require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

OF THE ASSESSOR.

§ 88. DUTIES OF ASSESSOR.] The assessor shall perform all and singular the acts and duties which now are or may be hereafter prescribed by law for assessors to perform.

OF THE PROBATE COURT AND THE JUDGE THEREOF.

§ 89. PROBATE COURTS—RECORD—SEAL.] There shall be a probate court, held by the judge of the probate court, in each organized county, which shall have the jurisdition and proceed in the manner provided in the law governing proceedings in probate courts and of guardian and ward. They shall be courts of record, and shall have a seal, and the judge thereof shall also be the clerk of the said court.

§ 90. COURT ALWAYS OPEN—TERMS.] The court shall be always open for the transaction of probate business; and the judge thereof shall especially attend his office and hold terms of the probate court, beginning on the first Mondays of January, March, May, July, September and November of each year, and continuing so long as shall be necessary.

§ 91. OFFICE, FURNITURE, RECORDS.] The judge of the probate court shall keep his office at the county seat in such rooms as the county may provide, and his office shall be kept open at reasonable hours. He shall safely keep all the papers, books and records of his office or relating to any case or business of the probate court, or before him as judge thereof, and receive and pay out according to law any money which, by law, may be payable to him. The county shall provide such tables, desks, cases for books and papers and all necessary books and papers, and books of record and other property or furniture required for the office.

§ 92. JUDGE NOT COUNSEL—WHEN.] A judge of the probate court shall not be counsel or attorney in any civil action for or against any executor, administrator, guardian, trustee, minor, or other person over whom or whose accounts he has, or by law would have jurisdiction, whether such action relate to the business of the estate or not.

OF THE TREASURER.

§ 93. TREASURER'S GENERAL DUTIES] It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and other moneys which by law are directed to be paid to him, and all moneys received by him for the use of the county shall be paid by him only on the warrant of the board of county commissioners drawn according to law, and all other moneys shall be paid over by him as provided by law.

§ 94. METHOD AND PUBLICITY OF ACCOUNTS.] He shall be the collector of taxes; shall keep his office at the county seat, and shall attend his office three days in each week. He shall be charged with the amount of all tax lists in his hands for collection, and credited with the amounts collected thereon, and the delinquent list, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom, and on what account received, in cash, warrants, county or road orders; and if in warrants or orders, their kind, number, or other designation, amounts for which they were drawn, interest due thereon, and the amounts of the receipts thereon indorsed, if any; also of all disbursements by him made, showing the time when, to whom, on what account and the amount paid: and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation, shall be exhibited in separate and distinct columns, or accounts, and so as to show whether the same was received or paid in cash, or warrants or orders, and if either of the latter, their designation and other particulars as above required; and the county treasurer shall at all times exhibit such accounts, when desired, to the territorial, county, or school officers, entitled to receive the same, and shall at any time pay over the balance in his hands to them, upon receiving proper vouchers.

§ 95. BOARD EXAMINES AND SETTLES ACCOUNTS] The books, accounts and vouchers of the county treasurer, and all moneys, warrants or orders remaining in the treasury, shall at all times be subject to the inspection and examination of the board of county commissioners, and at the regular meetings of the board in January and July of each year, and at such other times as they may direct, he shall settle with them his accounts as treasurer, and for that purpose shall exhibit to them all his books, accounts and moneys, and all vouchers relating to the same, to be audited and allowed, which vouchers shall be retained by them for evidence of his settlement; and if found correct, the accounts shall be so certified; if not, he shall be liable on his bond.

§ 96. TO INSURE COUNTY PROPERTY.] When directed by the board of county commissioners he shall cause to be insured, at the charge of the county, any or all of the public buildings and property belonging to the same, in the name of himself as treasurer and his successors in office, or otherwise as said board may direct; and in case of the destruction or damage of the buildings or property so insured, such treasurer shall demand and receive the moneys due on account of such insurance, and pay the same into the county treasury, and such moneys shall be applied to the fund for rebuilding or restoring such buildings or property.

OF THE COUNTY SURVEYOR.

§ 97. SURVEYOR'S GENERAL DUTIES.] The county surveyor shall make, in a good and professional manner, all surveys of land within his county which he may be called upon by the owner thereof, or his representative, or directed by the district or probate courts, or the board of county commissioners, to make; and, also, all lands, tracts or lots owned by the county, and public roads, when so directed by said board; and his surveys shall be held as presumptively correct.

§ 98. RECORD OF NOTES AND PLATS.] He shall transcribe the field notes and plats of such surveys into convenient and substantial record books to be furnished by the county, when the board of commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office. They may be kept in the office of the county clerk, and said record shall be competent evidence in all courts of the facts therein set forth.

§ 99. METHOD OF RE-SURVEY AND SUBDIVISION.] The re-survey and subdivision of lands by all surveyors shall be according to the laws of the United States, and the instructions issued by the officers thereof in charge of the public land surveys, in all respects; and in the subdivision of fractional sections, bounded on any side by a meandered lake or river, or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equi-distant, as near as may be, between the like section lines established by the original survey.

§ 100. SWORN CHAINMEN IN DISPUTED CASES.] Whenever the survey made is of lines and monuments in dispute between parties, or by order of the district or probate courts, the chainmen must be disinterested persons, approved and sworn by the surveyor to measure justly and impartially to the best of their skill and ability.

§ 101. FULNESS AND ACCURACY OF NOTES AND PLATS.] The record of the field notes and plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present, the date of the survey, the names of the chainmen, and that they were approved and sworn by the surveyor, when so required by law. The courses shall be taken according to the true meridian, and the variation of the magnetic needle therefrom, shall be noted, and also whenever any material change therein shall occur.

§ 102. RETRACING LINES TO AVOID ERRORS.] In retracing lines or making any survey, he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidences or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments.

§ 103. ASSISTANTS—HOW PAID.] All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed.

CHAPTER 22.

VACANCIES IN OFFICE AND SUPPLYING SAME.

RESIGNATIONS.

§1. RESIGNATIONS, TO WHOM MADE.] Resignations may be made as follows:

1. Of all territorial and district officers, to the governor.

2. Of all members of the legislative assembly, to the presiding officer of their branches respectively, when in session; and when not in session, to the governor; and when made to the presiding officer, he shall at once notify the governor thereof.

3. All the officers of the legislative assembly, to the respective branches thereof.

4. Of all elective county officers, to the board of county commissioners, except of county commissioners, which shall be made to the county clerk.

5. Of officers of civil townships, to the board of supervisors of the township, except of members of said board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the clerk of the district court of the resignation of all officers whose bonds are filed with that officer.

6. Of all officers holding their office by appointment, to the body, board, court or officer that appointed them.

OF VACANCIES.

§ 2. EVENTS CAUSING VACANCIES.] Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent.

2. His resignation.

3. His removal from office.

4. Failure to qualify as provided by law.

5. His ceasing to be a resident of the territory, district, county, township or precinct in which the duties of his office are to be exercised, or for which he may have been elected.

6. His conviction of any infamous crime, or of any offense involving a violation of his official oath.

7. Whenever a judgment shall be obtained against him for a breach of his official bond.

OF REMOVALS.

§ 3. CAUSES FOR REMOVAL OF CERTAIN CLASSES OF OFFICERS.] All elective county, township and precinct officers may be charged, tried and removed from office for either of the causes following:

1. Habitual or willful neglect of duty.
2. Gross partiality.
3. Oppression.
4. Extortion.
5. Corruption.
6. Willful maladministration in office.
7. Habitual drunkenness.
8. For a failure to produce and account for all public funds and property in his hands at any settlement or inspection authorized by law.

§ 4. WHO MAY BRING ACTION.] The board of county commissioners in the name of the county or any person in his own name may make such a charge and bring the action, and the district court shall have exclusive original jurisdiction thereof. The proceedings shall be as provided in the codes of civil and criminal procedure.

§ 5. COURT MAY SUSPEND OFFICER.] If the cause be continued, the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony or affidavits then presented; and if such suspension take place, the board of county commissioners shall temporarily fill the office by appointment.

§ 6. QUESTION TRIED AS IN OTHER ACTIONS.] The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant, or as provided for in the code of criminal procedure; and a copy thereof shall be certified to the board of county commissioners, and the county clerk shall enter the same upon the proper record.

§ 7. PROPERTY DELIVERED TO SUCCESSOR.] Upon the death, resignation, suspension or removal from office of any officer, all books and papers belonging to his office, and all moneys in his hands, and all property of whatever kind, held by him by virtue of his office, shall be delivered to his successor.

OF FILLING VACANCIES.

§ 8. VACANCIES FILLED BY APPOINTMENT.] All vacancies, except in the offices of members of the legislative assembly, shall be filled by appointment, as follows:

1. In the territorial and district officers, by the governor.
2. In county and precinct officers, by the board of county commissioners, except vacancies in said board.
3. In officers of civil townships, by the justices of the peace of the town-

ship together with the board of supervisors, or a majority of them, by warrant under their hands; and if a vacancy occurs from any cause in the foregoing board of appointment, the remaining officers of such board shall fill any vacancy therein.

§ 9. FILLING VACANCY IN COUNTY BOARD.] When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining member or members of said board, with the judge of the probate court and county clerk, to immediately appoint some suitable person to fill such vacancy from the district where the vacancy occurs.

§ 10. BRIEF VACANCIES NOT TO BE FILLED.] If a vacancy occurs thirty days previous to an election day at which it may be filled, no appointment shall be made unless it be necessary to carry out said election, and the canvass of the same according to law; in that case an appointment may be made at any time previous to said election, to hold until after said election, or until his successor is elected and qualified.

§ 11. APPOINTMENTS IN WRITING—TERM.] Appointments under the provisions of this act shall be made in writing, and made to continue until the next general election, at which the vacancy can be filled, and until a successor is elected and qualified, to be filed with the secretary of the territory, or in the proper county offices respectively.

§ 12. APPOINTEES — HOW QUALIFIED.] Persons appointed to offices as herein provided, shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment.

CHAPTER 23.

CIVIL TOWNSHIPS.

ORGANIZATION OF CIVIL TOWNSHIPS.

§ 1. TOWNSHIP ORGANIZATION ADOPTED BY VOTE OF COUNTY.] Whenever the county commissioners of any county shall deem it expedient they may submit, at a special election called for that purpose, at least sixty days before any general election, the question whether the system of township government as hereinafter provided, shall be adopted in said county, and at such special election there shall be written or printed on the ballots the words, "For township organization," or, "Against township organization."

§ 2. WHOLE COUNTY DIVIDED BY COMMISSIONERS.] If a majority of votes cast at such election shall be in favor of township organization, the board of county commissioners shall immediately proceed to divide the county into civil townships, fix and determine the boundaries thereof, and number the same, and in so doing shall have regard to natural boundaries and topography, and may at any time thereafter alter and change the same: *Provided*, That the number of civil townships shall not exceed the number of congressional townships, or fractional parts thereof greater than one half, in any county.

§ 3. SELECTION OF TOWNSHIP NAMES.] At the first township meeting, which shall be on the day of the next general election, held under the provisions of this chapter, the electors of each township shall choose by ballot a name for their respective townships to be substituted in lieu of the number fixed by the board, which shall be recognized by the board, and entered upon their records, after which such township shall be known and designated in law by the name so selected, and should the electors of any township fail to choose a name, as provided, the board shall select one and so record it.

§ 4. COUNTY CLERK REPORTS PLATS AND NAMES.] The county clerk shall, within thirty days after the first township elections held under the provisions of this chapter, transmit to the territorial auditor a plat of the county showing the boundaries and name of each civil township therein, and shall record a copy of the same, together with all the acts and proceedings done or had hereunder, in a book to be kept for that purpose.

§ 5. AUDITOR TO RETURN DUPLICATE NAMES.] If the auditor, on comparing the report with those previously made from other counties, finds that any two or more townships have the same name, he shall transmit to the county last adopting the township organization the name of the township to be altered, and the board of county commissioners shall at their next meeting thereafter adopt for such township some name different from those theretofore adopted, so that no two townships organized under the provisions of this chapter shall have the same name, and when such name is adopted the county clerk shall inform the auditor thereof, as before directed, and note the same in the county record.

§ 6. PRESENT TOWNSHIPS REMAIN.] The limits, boundaries and organization of every organized township shall remain as now established until otherwise provided by the board of county commissioners as provided by law, and in any county hereafter organized into civil townships under the provisions of this chapter there shall be elected no county justices of the peace, constables or assessor, and all provisions of law relating to county government in conflict with the provisions of this chapter, shall not apply to each county.

OF THE CORPORATE POWERS OF CIVIL TOWNSHIPS.

§ 7. TOWNSHIP BODY CORPORATE—POWERS.] Each civil township is a body corporate for civil and political purposes only, and as such has power and capacity:

1. To sue and be sued.

2. To purchase and hold lands within its own limits, and for the public use of its own inhabitants, subject to the powers of the legislative assembly.

3. To make such contracts, purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.

4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its own inhabitants.

§ 8. POWERS LIMITED TO THOSE GRANTED.] No civil township shall possess or exercise any corporate powers except such as are enumerated in this chapter, or are especially given by law, or necessary to the exercise of the powers so enumerated or granted.

§ 9. TOWNSHIP ACTS BY NAME.] All acts or proceedings by or against a township in its corporate capacity shall be in the name of such township, but every conveyance of lands within the limits of such township made in any manner for the use and benefit of its inhabitants has the same effect as if made to the township by name.

POWERS OF ELECTORS.

§ 10. ELECTORS HAVE POWER OVER POUNDS, OFFICERS, ACTIONS, TAXES, RULES, PENALTIES AND ROADS.] The electors of each township shall have power at their annual township meeting:

1. To determine the number of pound masters, and the location of pounds.

2. To elect such township officers as are required to be chosen.

3. To direct the institution or defense of actions in all controversies where such township is interested.

4. To direct such sums to be raised in such township for prosecuting or defending such actions as they may deem necessary.

5. To make rules and regulations for impounding animals in such townships.

6. To impose such penalties on persons offending against any rule or regulation established by said townships, as they may think proper, not exceeding ten dollars for each offense, unless herein otherwise provided.

7. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the township.

8. To vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for other necessary township charges, as they deem expedient; *Provided*, That they may, at their annual township meeting, direct such an amount of the poll and road tax of the township to be expended on the highways of an adjoining township as they deem conducive to the interests of the township; which labor and tax shall be expended under the direction of the supervisors of the township furnishing the same.

OF TOWNSHIP MEETINGS.

§ 11. TOWNSHIP MEETING ANNUAL.] The citizens of the several townships qualified to vote at general elections shall annually assemble and hold township meetings in their respective townships, on the day and at the place designated for holding the general election, and at such hour as the electors thereof at their annual township meetings, from time to time may appoint.

§ 12. SPECIAL MEETING—HOW CALLED.] Special township meetings may be held for the purpose of transacting any lawful business whenever the supervisors, township clerk and justices of the peace, or any two of them, together with at least twelve other freeholders of the township, file in the office of the township clerk a written statement that a special meeting is necessary to the interests of the township.

§ 13. TOWNSHIP CLERK GIVES NOTICE.] Every township clerk with whom such statement is filed, as required in the preceding section, shall record the same, and immediately cause notices to be posted up in five of the most public places in the township, giving at least five days notice of such special meeting; and if there be a newspaper printed in said township he shall cause a copy of said notice to be published therein at least three days before the time appointed for such meeting.

§ 14. WHAT NOTICE SPECIFIES.] Every such notice shall specify the purpose for which the meeting is to be held, and no other business shall be transacted at such special meeting than is specified in such notice.

§ 15. MEETINGS BETWEEN 9 AND 10 A. M.—HOW ORGANIZED.] The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual or special township meeting, or at the hour appointed by the electors of the township at a former township meeting, shall be called to order by the township clerk, if he be present; in case he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such meeting. The township clerk last before elected shall be clerk of the meeting, and keep faithful minutes of the proceedings, in which he shall enter, at length, every order or direction, and all rules and regulations, made by such meeting. If the township clerk is absent, then such person as shall be elected for that purpose, shall act as clerk of the meeting.

§ 16. ORDER OF BUSINESS BEFORE MEETING.] At the opening of every township meeting, the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator, and no proposition to reconsider any vote shall be entertained at any township meeting, unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at the election up to the time such motion is made; and all questions upon motions made at town meetings shall be determined by a majority of the electors voting; and the moderator shall ascertain and declare the result of the votes on each question.

§ 17. QUALIFICATION OF VOTERS.] No person is a voter at a township meeting unless he is qualified to vote at the general election.

§ 18. MINUTES SIGNED BY CLERK AND MODERATOR.] The minutes of the proceedings of every township meeting shall be subscribed by the clerk and moderator of said meeting, and shall be filed in the office of the township clerk within two days after such township meeting.

TOWNSHIP OFFICERS TO BE ELECTED.

§ 19. OFFICERS OF TOWNSHIPS ELECTED.] There shall be elected by ballot for each township, three supervisors, one of whom shall be designated on the ballots as chairman, one clerk, one treasurer, one assessor, two justices of the peace and two constables, who shall hold their offices for the term of one year, and until their successors are qualified, except justices of the peace and constables who shall hold their offices for two years.

§ 20. HOW AND WHEN CHOSEN.] The officers to be elected by ballot shall be voted for and named upon the same ballot with county, district and territorial officers at the general election. All other officers, if not otherwise provided, shall be chosen either by yeas and nays, or by a division as the electors may determine.

§ 21. RETURN OF VOTES.] When the votes cast at the general election shall have been canvassed and the number received by each person voted for, for each office, counted and ascertained, as provided in the general election law, the election board shall, in addition to the return to the county clerk therein provided, make a separate return in like manner and form to the township clerk of the persons voted for, and the votes for each person cast for each township office.

§ 22. CANVASS OF VOTES.] The clerk of every township shall, within twenty days after each election, taking to his assistance the chairman of the township board and one justice of the peace, or these failing, any other two elective township officers, proceed to canvass said returns and make an abstract thereof, which shall be signed by the officers making the same which shall be filed in the township records by the clerk.

§ 23. TIE VOTE DETERMINED.] In case of a tie vote for any office it shall be determined by the township clerk in the same manner as provided for county officers.

§ 24. NOTICE TO ELECTED OFFICERS.] The township clerk shall within ten days after the canvass of the votes and the determination of the persons elected, transmit to each person elected to any township office, a notice of his election.

§ 25. OTHER OFFICERS CHOSEN.] There shall also be chosen by the electors at each annual township meeting one overseer of highways, and one pound master, who shall hold office for the term of one year or until their successors are elected and qualified.

§ 26. QUALIFICATION OF SUCH OFFICERS.] They shall qualify by oath of office in writing to be filed with the township clerk, and within the period required for other civil officers. Said oath shall be taken before the township clerk or justice of the peace, without fee, and certified by the officer before whom it was taken, with the date of taking the same.

§ 27. SUPERVISORS ARE JUDGES OF ELECTION.] The township supervisors of each township shall be the judges of election, and if there shall be any vacancy in said board of judges, the electors present shall choose *viva voce* from the qualified electors of said township, so many judges as there shall be vacancies in such board.

§ 28. CLERKS OF ELECTION.] The township clerk shall be clerk of elections, and the board of judges shall have power to appoint one of the qualified electors of such township to act as the other clerk of election.

§ 29. JUDGES AND CLERKS APPOINTED SHALL TAKE OATH.] Any person chosen as prescribed in the preceding sections to fill any vacancies in the office of judges or clerks of election, shall, before they enter upon the duties of their office take and subscribe to the oath required of them by law. Said oath shall be taken before the justice of the peace or any other officer authorized by law to administer oaths, without fee, and certified by the officer before whom it was taken, with the date of taking the same.

MISCELLANEOUS PROVISIONS.

§ 30. CERTIFICATE TO ACTS OF JUSTICE OF PEACE—HIS RESPONSIBILITY.] The oath and bond of a justice of the peace filed in the office of the clerk of the district court for the county or judicial subdivision are sufficient authority for said clerk to certify to the official acts and signature of such justice of the peace; and any person aggrieved by the acts of any such justice of the peace may maintain an action on said bond in his own name against said justice and his sureties.

§ 31. PENALTY FOR REFUSAL TO SERVE.] If any township officer, who is required by law to take an oath of office, enters upon the duties of his office before taking such oath, he forfeits to such township the sum of fifty dollars.

POWERS OF BOARD OF SUPERVISORS.

§ 32. POWERS OF TOWNSHIP SUPERVISORS.] The board of supervisors shall have charge of such affairs of the township as are not by law committed to other township officers; and they shall have power to draw warrants on the township for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the township, and for all other moneys raised by the township to be disbursed for any other purpose.

§ 33. POWER OF TOWNSHIP OVER VILLAGE STREETS.] Whenever any incorporated town which is laid out into streets is included within the limits of an organized township, the township supervisors are authorized to cause improvements to be made in any street that may be needed as a highway, if the corporate authorities of such town neglect to make such improvements.

§ 34. SUPERVISORS MAY MAINTAIN ACTIONS FOR PENALTIES, ETC.] The board of supervisors of any township shall, by their name of office, prosecute, for the benefit of the township, all actions upon bond given to them or their predecessors in office; and shall also sue for and collect all penalties, fines and forfeitures in respect to which no other provision is made, incurred by any officer or inhabitant of the township, or any other person; and they shall have power, in like manner, to prosecute for any trespass committed upon any public enclosure or other property belonging to the township, and shall pay all moneys collected under this section to the township treasurer.

§ 35. TWO SUPERVISORS A QUORUM.] Any two of the supervisors constitute a quorum for the performance of any duty required by law of the township supervisors, except when otherwise provided: *Provided*, That when the board of supervisors are equally divided upon any question they shall defer a decision thereof until a meeting of the full board, and then the question shall be decided by a majority vote of the board.

§ 36. POLICE POWER IN VILLAGES NOT INCORPORATED.] Any organized township containing any village not incorporated may enact such regulations as may be necessary to restrain all disorderly conduct within the village arising from drunkenness or otherwise.

§ 37. OFFENSES—HOW PUNISHED.] Any person deemed guilty of such disorderly conduct shall, on complaint of any person aggrieved, be examined before any justice of the peace of such township, and upon conviction thereof be fined in the sum of not less than two nor more than ten dollars, and all costs arising from such complaint and trial, without process first issuing.

§ 38. CONSTABLE MAY ARREST.] Any constable in any such township shall be a proper officer for arresting and detaining such offending person.

§ 39. TOWNSHIP MAY PROVIDE FOR CONFINEMENT OF PRISONERS.] Any township with any such village not incorporated, shall at the annual township meeting have power to vote any appropriations necessary for providing such place of confinement, and shall further add to any such regulations necessary for carrying this into effect.

§ 40. NOTICE THEREOF TO BE GIVEN.] Any township providing such place of confinement shall cause notice of the same to be published in the newspaper having the largest circulation in such township, if there be any, or cause the township clerk to post notice thereof in three of the most public places in said township.

§ 41. CONVICTED PERSONS CONFINED.] Any person convicted under the preceding sections shall be confined in the calaboose until all fines and costs are paid, not less than one day, nor more than ten days.

§ 42. TOWNSHIP EXEMPT FROM ROAD AND BRIDGE TAX.] All townships organized under the provisions of this act shall be exempt from the payment of a general county tax for road or bridge purposes, and the supervisors of such township shall levy such tax as they may deem necessary, not exceeding one per cent. of the assessed valuation of such township, to lay out and keep in repair the highways and bridges therein.

TOWNSHIP AUDITING BOARD.

§ 43. SUPERVISORS ARE AUDITING BOARD.] The supervisors shall constitute a township board for the purpose of auditing all accounts payable by said township; and, if, from any cause, there be not three supervisors present, to constitute said board, the chairman, and in his absence, either of the other supervisors, may notify any one, or so many of the justices of the said township, as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the township auditing board.

§ 44. TIME FOR MEETINGS OF BOARD.] The township board shall meet annually on the Tuesday next preceding the annual township meeting, and at such other times as they deem necessary and expedient, for the purpose of auditing and settling all charges against said township; and they shall state on each account the amount allowed by them; but no allowance shall be made upon any account which does not specifically state each item of the same, and the nature thereof.

§ 45. BOARD TO EXAMINE TREASURERS ACCOUNTS.] The said board shall also at their annual meeting in each year, examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other township officers who are authorized by law to receive or disburse any money of the township by virtue of their office.

§ 46. BOARD TO MAKE REPORT.] Such board shall draw up a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the township, and an estimate of the sum necessary for the current expenses thereof, and other incidental expenses for the ensuing year.

§ 47. REPORT TO BE READ, WHEN.] Such report shall be produced and publicly read by the township clerk at the next ensuing township meeting, and the whole or any portion of such report may be referred, by the order of the meeting, to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

§ 48. TOWN TREASURER TO PAY ACCOUNTS.] The amount of any account audited and allowed by the township board, and the amount of any account voted to be allowed at any township meeting, shall be paid by the township treasurer, on the order of said board, signed by the chairman and countersigned by the clerk; and all orders issued to any person by the township board for any sums due from such township, shall be receivable in payment of township taxes of said township.

TOWNSHIP BOARD OF HEALTH.

§ 49. BOARD OF HEALTH] The township supervisors shall constitute a board of health, and within their respective townships shall have and exercise all the powers necessary for the preservation of the public health.

§ 50. POWERS AND DUTIES OF BOARD OF HEALTH] The board of health may examine into all nuisances, sources of filth and causes of sickness, and make such regulations respecting the same as they may judge necessary for the public health and safety of the inhabitants; and every person who shall violate any order or regulation made by any board of health, and duly published, shall be deemed guilty of misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding twenty days.

§ 51. BOARD OF HEALTH TO GIVE CERTAIN NOTICES.] Notice shall be given by the board of health of all orders and regulations made by them, by publishing the same in some newspaper, if there is one published in such township; if there is none, then by posting up such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons.

§ 52. NUISANCES TO BE REMOVED BY, WHOM.] Whenever any nuisance, source of filth, or cause of sickness, is found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the township.

§ 53. OWNER LIABLE FOR EXPENSES.] Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as has caused or permitted the same.

§ 54. BOARD OF HEALTH MAY ENTER BUILDING OR VESSEL.] Whenever the board of health thinks it necessary for the preservation of the health of the inhabitants, to enter any building or vessel in their town, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his township, stating the facts in the case so far as he has knowledge thereof.

§ 55. WHO MAY ISSUE WARRANT TO REMOVE NUISANCE.] Such justice shall thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove, or prevent, under the direction of the members of such board of health.

§ 56. DISPOSITION OF PERSONS WITH SMALL POX, ETC.] When any person coming from abroad, or residing in any township within this territory, is infected, or lately has been infected, with the small pox or other contagious disease, dangerous to the public health, the board of health of the township where such sick or infected person is, may immediately cause him to be removed to a separate house, if it can be done without danger to his health, and shall provide for him nurses and necessaries, which shall be at the charge of the person, his parents, guardian, or master, if able, otherwise at the charge of the township to which he belongs; and if he is not an inhabitant of any township, at the charge of the county.

§ 57. DISPOSITION OF PERSONS WITH SMALL POX, ETC.] If such infected person cannot be removed without danger to his health, the board of health shall make provision, as directed in the preceding section, for such person, in the house where he may be; and in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants.

§ 58. WHEN BOARD MAY ESTABLISH HOSPITAL.] When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and, with all its inmates, subject to the regulations of the board.

OF THE TOWNSHIP CLERK.

§ 59. TOWNSHIP CLERK CUSTODIAN OF RECORDS.] The township clerk shall have the custody of records, books and papers of the township when no other provision is made by law; and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office.

§ 60. DUTY OF CLERK TO KEEP RECORD] He shall record in the book of records of his township minutes of the proceedings of every township meeting, and he shall enter therein every order or direction, and all rules and regulations of any such township meeting ; and shall also file and preserve all accounts audited by the township board, or allowed at a township meeting, and enter a statement thereof in such book of records.

§ 61. TOWNSHIP CLERK TO GIVE BONDS.] Every person elected or appointed to the office of township clerk in any of the townships of this territory, shall, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, execute a bond, with two or more sufficient sureties, to be approved by the township treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Said bond so approved shall be filed in the office of the county clerk for the benefit of any person aggrieved by the acts or omissions of said township clerk, and any person so aggrieved, or the township, may maintain an action on said bond against said township clerk and sureties.

§ 62. TOWNSHIP CLERK TO NOTIFY COUNTY CLERK OF ELECTION.] Every township clerk, immediately after the qualification of any constable, elected or appointed in his township, shall transmit to the county clerk the name of such constable.

§ 63. TOWNSHIP CLERK TO NOTIFY COUNTY CLERK OF ELECTION.] Each township clerk shall, immediately after the election of any justice of the peace in his township, transmit a written notice thereof to the county clerk, stating therein the name of the person elected, and the term for which he is elected ; and, if elected to fill a vacancy, he shall state in said notice who was the last incumbent of the office.

§ 64. PENALTY FOR NEGLECT.] If any township clerk willfully neglects to make such return, such omission is hereby declared a misdemeanor, and on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars.

§ 65. CLERK TO NOTIFY COUNTY CLERK OF TAXES LEVIED.] The township clerk shall be the clerk of the township board, and shall keep a true record of all their proceedings in his office, and it shall be his duty to forward to the county clerk, on or before the first Monday in July of each year, the rate per cent of all taxes voted by the township, and the county clerk shall then extend the tax according to such rate per cent. on the tax books, and the same when so extended shall be collected as other taxes and credited to the proper township.

§ 66. TOWN TREASURER TO COLLECT AND PAY MONEY.] The township treasurer shall receive and take charge of all moneys belonging to the township or which are by law required to be paid into the township treasury, and shall pay over and account for the same upon the order of such township or the officers thereof, duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law.

§ 67. METHOD AND PUBLICITY OF ACCOUNTS.] Every township treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the township for that purpose, and exhibit such account, together with his vouchers, to the township board at its annual meeting, for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor has qualified according to law.

§ 68. TO RECEIVE AND RECEIPT FOR MONYES.] The township treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his township, and on receipt of such moneys shall deliver proper vouchers therefor. Each township treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the township treasury, for receiving, safe keeping, and paying over the same according to law.

§ 69. ANNUAL REPORT OF TREASURER IN DETAIL.] Each township treasurer, shall make out and present to the township board on the Tuesday next preceding the annual township meeting, a statement in writing of the moneys by him received into the township treasury from the county treasurer, and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person, and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the township clerk, and shall be by such clerk carefully preserved and recorded in the township book of records.

§ 70. PENALTY FOR NEGLECT.] Every township treasurer who refuses or neglects to comply with the provisions of the four preceding sections, shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court, if there is no jury empanelled, and may be recovered by civil action, in the name of the person who prosecutes the same, with costs of suit; one half shall go to the person so prosecuting, and the remainder to the township of which said delinquent is or has been treasurer.

COMPENSATION OF TOWNSHIP OFFICERS.

§ 71. WHAT OFFICERS ARE ENTITLED TO COMPENSATION AND AMOUNT OF FEES.] The following township officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the township, in the duties of their respective offices. The township assessors shall receive for their services two dollars per day, while engaged in their respective duties as such assessors. The township clerk and supervisors shall receive for their services one dollar and fifty cents per day, when attending to business in their township, and two dollars when attending to business out of township; no township supervisor shall receive more than twenty dollars, for compensation, in any one year: *Provided*, That the township clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon township officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notice required by law, twenty-five cents each; for recording any order or any instrument of writing authorized by law, six cents for each one hundred words; for copying any record or instrument on file in his office, and certifying the same, six cents for each one hundred words, to be paid for by the person applying for the same: *Provided further*, That at any township meeting, before the electors commence balloting for officers, they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent.

§ 72. DUTIES AND FEES OF POUND MASTER AND DISPOSITION OF IMPOUNDED ANIMALS.] The pound master is allowed the following fees; to-wit: For taking into pound, and discharging therefrom, any horse, ass or mule, and all neat cattle, ten cents each. For every sheep or lamb, three cents each; and for every hog, large or small, five cents; and twenty cents for keeping each head twenty-four hours in pound. And the pound master has a lien on all such animals, for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid and said animals removed within four days after they are so impounded, the said pound master shall give notice, by posting the same in three of the most public places in said township, that said animals (describing them,) are impounded, and that unless the same are taken away and fees paid, within fifteen days after the date of such notice, he will sell the same at public vendue, at the place where the township meetings of said township are usually held, and on the day designated in such notice, the said pound master shall expose the said animals for sale, and sell the same to the highest bidder in cash, for which services he shall receive two per cent. of the purchase money for each animal. Out of the moneys realized from said sale, the said pound master shall deduct all his legal fees and charges, and pay the balance, if any, to the chairman of the board of township supervisors, at the same time giving to said supervisors, an accurate description of the animals sold, and the amount received by him for each animal, and shall take a receipt and duplicate therefor, and file one of them with the township clerk; *Provided*, That the said supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from the said pound master; but if said money is not claimed within that time, then the sum so received shall be retained for the use of said township.

ACTIONS BY AND AGAINST TOWNSHIPS.

§ 73. ACTION AGAINST TOWNSHIP, HOW BEGUN AND DEFENDED.] In legal proceedings against a township by name, all papers shall be served on the chairman of the board of supervisors, and in case of his absence, on the township clerk; and whenever any action or proceeding is commenced, said chairman shall attend to the defense thereof, and lay before the electors of the township at the first township meeting, a full statement of such proceedings, for their direction in regard to the defense thereof.

§ 74. TOWNSHIP JUSTICE NO JURISDICTION.] No action in favor of any township shall be brought before any justice of the peace residing in such township.

§ 75. DAMAGES IN LIEU OF PENALTY.] Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the township, if it appears on the trial thereof that the actual amount of injury to such township lands, in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage, with cost of suit, shall be recovered in said action instead of any penalty for said trespass imposed by the township meeting, and such recovery shall be used as a bar to every other action for the same trespass.

§ 76. PARTITION OF TOWNSHIP LANDS.] Whenever, by decree or decision in any action or proceeding brought to settle any controversy in relation to township commons or other lands, the common property of a township, or for the partition thereof, the rights of any township are settled and confirmed, the court in which such proceedings are had may partition such lands according to the right of parties.

§ 77. TREASURER TO PAY JUDGMENTS WHEN NOT APPEALED.] When a judgment is recovered against any township, or against any township officers, in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the township treasurer upon demand, and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money of such township in his hands not otherwise appropriated. If he fails to do so, he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal.

§ 78. JUDGMENT PAID BY SPECIAL TAX, OR EXECUTION ISSUE.] If judgment for the recovery of money is rendered against any township, and the judgment is not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next annual meeting of said township, a certified copy of the docket of the judgment may be presented to said township at said annual meeting. The supervisors of the township shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be levied as a special tax; and upon their failure to do so, execution may issue against the township property.

OF GUIDE POSTS.

§ 79. GUIDE POSTS.] Every township shall, in the manner provided herein, erect and maintain guide posts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travelers.

§ 80. SUPERVISORS REPORT LOCATION OF GUIDE POSTS.] The board of supervisors shall submit to the electors, at every annual meeting, a report of all the places at which guide posts are erected and maintained within the township, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report, they shall severally forfeit the sum of ten dollars.

§ 81. TOWNSHIP TO DIRECT WHERE POSTS TO BE ERECTED.] Upon the report of the supervisors, the township shall determine the several places at which guide posts shall be erected and maintained, which shall be recorded in the township records. A township which neglects or refuses to determine such places and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide posts reported to be necessary or convenient, by the supervisors, the township shall be estopped from alleging that such guide posts were not necessary or convenient.

§ 82. STYLE OF GUIDE POST.] At each of the places determined by the township, there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted, or otherwise marked, the name of the next town or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointed towards the towns or places to which said road leads; *Provided*, That the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for such guide post.

MISCELLANEOUS PROVISIONS.

§ 83. POUNDS IN CHARGE OF MASTER.] Whenever the electors of any township determine at their annual meeting to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose.

§ 84. ELECTORS MAY DISCONTINUE POUNDS] The electors of any township may, at any annual township meeting, discontinue any pounds therein.

§ 85. TOWNSHIP CHARGES—LIMITATION OF TAX.] The following shall be deemed township charges :-

1. The compensation of township officers for services rendered their respective townships.

2. Contingent expenses necessarily incurred for the use and benefit of of the township.

3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.

4. Every sum directed by law to be raised for any township purpose; *Provided*, That no tax for township purposes shall exceed the amount voted to be raised at the annual township meeting as provided in subdivision eight, section fifteen, aforesaid.

§ 86. LEVY OF TAXES.] The moneys necessary to defray the township charges of each township shall be levied on the taxable property in such township, in the manner prescribed in the chapter for raising revenue and other money for territorial and county purposes and expenses.

§ 87. OFFICERS TO DEMAND PROPERTY OF PREDECESSORS.] Whenever the term of any supervisor, township clerk or assessor expires, and another person is appointed or elected to such office, such successor, immediately after he enters on the duties of his office, shall demand of his predecessor all books and papers under his control belonging to such office.

§ 88. SAME IN CASE OF VACANCY.] Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so selected shall make such demand of his predecessor, or of any person having charge of such books and papers.

§ 89. PROPERTY TO BE DELIVERED ON OATH.] Every person so going out of office, whenever thereto required, pursuant to the foregoing provisions, shall deliver, upon oath, all records, books and papers in his possession, or in his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made.

§ 90. SAME BY ADMINISTRATOR, ETC.] Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon like oath, all records, books, papers or moneys in their possession, or under their control, belonging to the office held by their testator or intestate.

§ 91. ELECTION PRECINCT.] Each township organized under this chapter constitutes an election precinct.

§ 92. TOWNSHIP SHALL NOT CONTRACT DEBTS IN EXCESS OF TAXES.] No township has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township, and no township shall assess for township purposes more than three mills on the dollar of taxable property for any one year.

§ 93. THIS ACT NOT TO APPLY TO INCORPORATED CITIES.] Nothing in this chapter contained shall in any way apply to any portion of the territory which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its other powers, the same powers conferred by this chapter upon townships, in the same manner prescribed by law.

FORMS.

FORM OF NOTICE FOR FIRST TOWNSHIP MEETING.

The legal voters of the township of ...., in the county of ...., and Territory of Dakota, are hereby notified that the first township meeting for said township will be held at ...., in said township, on ...., the .... day of ...., A. D. 18 ., for the purpose of electing the following township officers: (State township officers to be elected.)

Attest:

................, Clerk.

................, }
................, } Commissioners.
................, }

FORM OF NOTICE OF ANNUAL TOWNSHIP MEETING.

The citizens of the township of ...., in the county of ...., and Territory of Dakota, who are qualified to vote at general elections, are hereby notified that the annual township meeting for said township will be held at ...., in said township, on Tuesday, the .... day of April next, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of the same day, for the following purposes:

1. To elect three supervisors, one of whom shall be designated on the ballots as chairman, one township clerk, one treasurer, one assessor, two justices of the peace, two constables, and overseer of highways for each road district in said township.

2. To (state the business to be transacted,) and to do any other business proper to be done at said meeting when convened.

Given under my hand, this ...... day of ...., A. D. 18 .

..............., Town Clerk.

FORM OF STATEMENT TO BE FILED IN THE OFFICE OF TOWNSHIP CLERK FOR SPECIAL TOWNSHIP MEETING.

The undersigned, township officers and other freeholders of the township of ...., in the county of ...., hereby declare and state that a special township meeting is necessary to the interests of said town, for the purpose of (here set forth the object of the meeting.)

Witness our hands this ...... day of ...., A. D. 18..

.........., Supervisor.
.............., Township Clerk.
.........., } Justices of the
......, } Peace.
(Names of twelve other freeholders.

FORM OF NOTICE FOR SPECIAL TOWNSHIP MEETING.

WHEREAS, The supervisors, township clerk, and justices of the peace, (or as the case may be,) together with twelve others, freeholders of the township of ...., have in writing filed in my office a statement that a special township meeting is necessary to the interests of said township.

The inhabitants, legal voters of the said township of ...., are therefore hereby notified, that a special township meeting will be held at ...., on the .... of ...., A. D. 18.., at nine o'clock in the forenoon, for the purposes following, to-wit: To (here enumerate specifically in proper order, the subjects to be acted upon as contained in the statement filed.) Being the objects contained in the statement filed in my office.

Given under my hand at ...., this .... day of ...., A. D. 18

..........., Township Clerk.

NOTICE OF ELECTION TO TOWNSHIP OFFICE.

To............................:

You are hereby notified that at the annual township meeting, (or special town meeting,) held in the town of ...., county of ...., and Territory of Dakota, on the ...... day of ...., A. D. 18.., you were duly elected to the office of ....

Given under my hand, this .... day of ...., A. D. 18

...., Township Clerk.

FORM OF OATH.

TERRITORY OF DAKOTA, } ss.
........County. }

I, ..., do solemnly swear, (or affirm,) that I will support the constitution of the United States, and of the territory of Dakota, and faithfully discharge the duties of the office of .... of the township of ...., in the county of ...., to the best of my ability. ...., A. D. 18..

Sworn to and subscribed before me this .... day of ...., A. D. 18..

A B, Justice of the Peace.

NOTICE OF ACCEPTANCE OF OVERSEER OR POUND MASTER.

To ... ., Township Clerk of the township of...........

SIR:—Having been elected (or appointed) overseer of highways (or pound master) for district number ....in said township, on the .... day of ...., A. D. 18...., I hereby notify you that I accept said office.

Witness my hand, this .... day of ...., A. D. 18....

....

FORM OF TREASURER'S BOND.

Know all men by these presents that we, A B, of the township of ...., in the county of ...., in the territory of Dakota, as principal, and C D and E F, of said county and state, as sureties, are held and firmly bound unto (names of supervisors) supervisors of said township of ...., and their successors in office, in the penal sum of (double the amount of money to be received) for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this .... day of .... A. D. 18 ....

The condition of the above obligation is such that, whereas, the above bounden, A B, has been elected (or appointed) treasurer for the said township of ...., for the current year, and has accepted the office, and is about taking upon himself the discharge of its duties.

Now, therefore, if the said A B shall faithfully execute and discharge all his duties as such treasurer, then the above obligation to be void, otherwise to remain in full force and effect.

A........B........ [SEAL.]
C........D........ [SEAL.]
E.... ..F........ [SEAL.]

INDORSEMENT OF APPROVAL.—I hereby approve the within bond and the sureties thereon.

....

Chairman of Board of Supervisors of the township of ....

Dated .... A D 18....

FORM OF WARRANT OF APPOINTMENT BY JUSTICES OF THE PEACE AND BOARD OF SUPERVISORS TO FILL VACANCY.

To ...., Esq., of the township of ...., in the county of ...., territory of Dakota, greeting:

WHEREAS, said township has failed to elect (state the officer, or if the vacancy occurs from any other cause named in the section, so state) for the year 18 ...., and the office of ......is now vacant: Therefore we do hereby appoint you (insert title of office) for said term (or county) to hold said office until the next annual township meeting, and until a successor is elected and qualified in your place; and you shall have the same powers and be subject to the duties and penalties as if you had been duly elected to said office.

Given under our hands this .... day of .... A. D. 18 ....

.... } Supervisors.
.... }
.... } Justices of
.... } the Peace.

FORM OF NOTICE BY TOWNSHIP CLERK TO ONE APPOINTED TO FILL VACANCY.

To ...., Esq., of the township of .... in the county of ...., and territory of Dakota:

You are hereby notified that on the .... day of .... A. D. 18 ...., the justices of the peace and supervisors of said township, by their warrant of that date, under their hands, appointed you to the office of (here insert the title of the office) for said township, which warrant has been duly filed in my office.

Given under my hand this .... day of .... A. D. 18 ....

................Township Clerk.

FORM OF NOTICE FOR TOWNSHIP MEETING WHERE TOWNSHIP HAS FAILED TO ELECT TOWNSHIP OFFICERS.

The township of .... county of ...., and territory of Dakota, having neglected at the time fixed by law to organize and elect township officers, we, the undersigned petitioners of said town, do hereby call a township meeting to elect [state the officers] to be held at ...., in said town, on the .... day of .... A. D. 18 ....

Dated .... A. D. 18 ....

[Names of at least twelve freeholders.]

AFFIDAVIT OF FREEHOLDER IN CASE NOTICE OF TOWNSHIP MEETING IS NOT GIVEN WITHIN THIRTY DAYS AFTER TIME FOR HOLDING ANNUAL TOWN MEETING.

TERRITORY OF DAKOTA, }
County of ...... } ss.

A B, being duly sworn, says he is a freeholder of and in the township of ...., in said county, that said township did, at the time fixed by law for holding its last annual township meeting, neglect [or refuse] to organize and elect township officers; that no notice for special township meeting to elect said officers has been given within thirty days after the time for holding the annual township meeting as aforesaid, and that this affidavit is made under section 47, for the purpose of enabling the board of county commissioners of said county to appoint the necessary township officers for the township aforesaid.

Subscribed and sworn to before me this .... day of ...., A. D. 18 ......

....

WARRANT OF APPOINTMENT BY BOARD OF COUNTY COMMISSIONERS.

WHEREAS, It has been made to appear by the affidavit of ...., filed in the office of the county clerk of the county of ....., and territory of Dakota, on the ..... day of ....., A. D. 18 ....., that the town of ...., in said county, did neglect (or refuse) to organize and elect town officers at the time fixed by law for holding its last annual town meeting, and that no notice for a special town meeting to elect said officers has been given within the time allowed by law for that purpose. Therefore we, the board of county commissioners of said county do hereby appoint [state each officer separately] for said town, until others are elected and qualified in their places.

Given under our hands this ...... day of ..... A. D. 18 ....

....

Attest: Chairman of Board of County Commissioners.

....County Clerk.

FORM OF RESIGNATION OF TOWNSHIP OFFICER.

To the board of supervisors of the township of ...., county of ...., and Territory of Dakota:

I hereby resign the office of ...., for said township, and respectfully request that my resignation be accepted, for the following reasons: (state cause of resignation.)

Dated this .... day of ...., A. D. 18...

A........ B........

FORM OF ACCEPTANCE.

The board of supervisors of said township of ...., being satisfied that the causes above set forth are sufficient, do accept the resignation of the said A. B.

Witness our hands this .... day of ...., A. D. 18..

............, } Supervisors.
............,
............,

FORM OF NOTICE TO TOWNSHIP CLERK.

To ...., township clerk of said township of ....:

You are hereby notified that the board of supervisors of said township have accepted the resignation of A. B., of the office of ...., for said township, and that said office is now vacant.

Given under our hands this .... day of ... ., A. D, 18..

............, } Supervisors.
............,
............,

FORM OF COMPLAINT

TERRITORY OF DAKOTA, } ss
.... County. }

A. B., on oath, complains and says that he is a member of the board of health of and for the township of ...., in said county, that said board on the ...... day of .... A. D. 18.., thinking it necessary for the preservation of the health of the inhabitants of said township, did attempt to enter (describing the building or vessel, and give name of owner, if known,) situate or being in said township, for the purpose of (state object) which then and there existed, and that said board of health and each member thereof present, was by .... refused such entry and prevented from entering such (building or vessel,) contrary to the statute in such case provided. And further deponent saith not, except that a warrant issue as prescribed by law.

A.............. B...............

Subscribed and sworn to before me, this .... day of ...., A. D. 18..

....

FORM OF WARRANT.

TERRITORY OF DAKOTA, } ss.
County of.............. }

The Territory of Dakota, to the sheriff or any constable of said county:

WHEREAS, A. B. has this day made complaint under oath to me, that (here insert the substance of the complaint,) and prayed that a warrant issue as prescribed by law; Now, therefore, you are commanded to take sufficient aid, and being accompanied by two or more of the board of health of said township of..........repair to (state place and matter complained of,) and the said (nuisance or other matter) destroy (remove or prevent,) under the direction of the members of the board of health aforesaid.

Given under my hand. this..........of................A. D. 18..

....
Justice of the Peace.

FORMS UNDER SECTIONS 66 AND 67.

Town of...........A. D. 18..

............clerk of the district court of the county of....... :

Sir:—A. B was elected (or appointed) constable of the township of..........in said county, on the........day of......A. D. 18....and has qualified according to law.

......................Township Clerk.

Town of...........A. D. 18..

............clerk of district court of the county of......:

Sir;—A. B. was, on the..........day........A. D. 18.. elected justice of the peace for said township for the term of...... [If elected to fill a vacancy, add:] Said A. B. was elected to fill a vacancy in said office, of which the last incumbent was......

......................Township Clerk.

FORM OF REPORT OF SUPERVISORS.

Report of the supervisors of the township of............county of............and Territory of Dakota, for the year.........:

Items of Account Allowed.		Nature of Account	Name of Person
....	$	....	....
....	....	....	....
	$		

The supervisors estimate that the following sums are necessary for the ensuing year to meet the expenses of the township:

Current expenses..	$....
Support of poor..	$....
Other incidental expenses..	$....
Total..	$....

[Add general statement of fiscal concerns.]

....

....

....

Supervisors.

FORM OF STATEMENT OF TOWNSHIP TREASURER.

Annual statement of........treasurer of the township of........county of........and Territory of Dakota, for the year 18..

Money received.	Date.	From whom.	On what Account.	Amount.
				$
				Total, $

Money paid out.	Date.	To whom.	For what Purpose.	Amount.
				$
				Total, $
				Bal., $

FORM OF NOTICE BY POUND MASTER.

Notice of Impounding and Sale.—Take notice that the following animals [describing them] are impounded in the township of............county of............and Territory of Dakota, and that unless said animals are taken away and fees paid within fifteen days after the date of this notice, I will sell the same at public vendue, to the highest bidder in cash, at [state place, which must be where township meetings are usually held,] at..........o'clock in the ....noon of that day.

Dated at..........this .... day of ...., A. D. 18...

....

Pound Master.

FORM OF REPORT OF SUPERVISORS.

The supervisors of the township of..................county of....................and Territory of Dakota, respectfully report that guide posts are erected and maintained in the places following, and none other in said township, viz.: [Give particular description of each place.] The supervisors are of opinion that guide posts ought to be erected and maintained in the following places in said township, and that there are no other places where such guide posts will be necessary or convenient.

Dated ...., A. D. 18 ....

............., } Supervisors.
.............,
.............,

OATH OF PERSON DELIVERING PAPERS, ETC.

You do solemnly swear [or affirm] that you have delivered to me as [state office,] all records, books and papers in your possession, or under your control, belonging to said office of...... ....heretofore held by you. So help you God.

CHAPTER 24.

INCORPORATION OF TOWNS AND CITIES.

§ 1. TOWNSITE TO BE SURVEYED AND PLATTED.] Persons intending to make application for the incorporation of a town, as hereinafter provided, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto.

§ 2. CENSUS TO BE TAKEN.] Such persons shall cause an accurate census to be taken of the resident population of such territory, as it may be on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

§ 3. SURVEY, MAP AND CENSUS SUBJECT TO EXAMINATION.] Such survey, map and census when completed and verified as aforesaid, shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days.

§ 4. APPLICATION FOR INCORPORATION TO BE BY PETITION.] Such application shall be by petition, subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained, according to said census taken; and the said petition shall have attached thereto or written thereupon, affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application, or as soon thereafter as the board can receive and consider the same.

§ 5. COUNTY COMMISSIONERS TO MAKE ORDER OF INCORPORATION.] The board of county commissioners in hearing such application, shall first require proof, either by affidavit or by oral examination of witnesses before them, that the said survey, map and census were subject to examination in the manner and for the period required by section three of this act; and if said board be satisfied that the requirements of this act have been fully complied with, they shall then make an order, declaring that such territory shall, with the assent of the qualified voters thereof, as hereinafter provided, be an incorporated town, by the name specified in the application aforesaid, which name shall be different from that of every other town in this territory, and they shall also include in such order a notice for a meeting of the qualified voters resident in said proposed town at a convenient place therein, to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated town.

§ 6. NOTICE OF MEETING TO BE GIVEN.] The board shall cause ten days notice of such meeting, by publication in a newspaper, if one be published in the county, and by posting up copies of said notice not less than ten in number, at the most public places in said proposed incorporated town.

§ 7. OPENING OF POLLS.] At the meeting of the qualified voters, as herein provided, polls shall be opened at nine o'clock in the forenoon of such day, and shall be kept open until four o'clock in the afternoon, when they shall be closed.

§ 8. ELECTION OF INSPECTORS.] The voters at such meeting, shall first proceed to the election of three inspectors who, after being duly chosen and qualified, and one of their number elected clerk, shall without delay proclaim to the meeting that the poll is now opened, and that they are ready to receive the ballots of the voters.

§ 9. MANNER OF VOTING.] The qualified voters of said proposed incorporated town shall vote by ballot, having thereon the words "for incorporation, yes;" or the words "for incorporation, no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such proposed town shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated town, to have continuance thereafter, by the name and style specified in the order made by the board of county commissioners, as hereinbefore provided, and the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting—the number having the word "yes" thereon, and the number having the word "no" thereon—which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners, at their next session, who, if satisfied of the legality of such election, shall make an order declaring that said town has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation, by the name and style aforesaid, shall thereafter be judicially taken notice of in all courts and places in this territory without specially pleading or alleging the same.

§ 10. DIVISION OF TOWN INTO DISTRICTS.] Such inspectors, when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among the same, and the convenience and contiguity of such district.

§ 11. NOTICE OF ELECTION.] They shall also give ten days notice by publication in a newspaper, if one be printed within such town, and by posting such notices in five public places therein, of an election to be held in such town for the purpose of electing officers thereof, naming the place therein, and the day upon which the same shall be had, but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given in like manner by the clerk of said town.

§ 12. ANNUAL ELECTION—WHEN HELD.] An election for officers of said town, after the first election, shall be held annually on the first Monday of May of each year, and at every such election the preceding board of trustees, or any three of them, shall act as the inspectors thereof.

§ 13. HOW LONG POLLS SHALL REMAIN OPEN.] At all elections in said town, the polls shall be open at nine o'clock in the forenoon, and shall not be finally closed until four o'clock in the afternoon of said day.

§ 14. INSPECTORS TO BE THE JUDGES OF ELECTION.] Such inspectors shall preside at such first election, and be the inspectors thereof, and, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable, for the election of county officers.

§ 15. WHAT TOWN OFFICERS TO BE ELECTED.] There shall be elected at the first, and at every subsequent election, one trustee from each district in said town, and also a clerk, assessor, treasurer, marshal and justice of the peace, who shall respectively hold their offices until the first Monday in May next following, or until their successors are elected and qualified: *Provided, however*, That nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person.

§ 16. PERSONS HAVING HIGHEST NUMBER OF VOTES TO BE ELECTED—DUTY OF INSPECTORS.] The persons having the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons who receive the highest number of votes respectively for clerk, marshal, assessor, treasurer and justice of the peace, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall be the further duty of such inspectors to make a certified statement, over their own signatures, of the persons elected to fill the several offices in said town, and file the same with the county clerk in the county thereof, within ten days after the date of such election, and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

§ 17. COUNTY CLERK TO MAKE RECORD OF STATEMENT.] It shall be the duty of the county clerk of the proper county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases.

§ 18. VACANCIES IN THE BOARD OF TRUSTEES—HOW FILLED.] A vacancy occurring in the board of trustees, or in any corporation office, shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district, if a trustee be appointed, in which the vacancy has occurred, and shall in no case extend beyond the annual elections provided for in this act.

§ 19. OFFICERS TO TAKE OATH.] The board of trustees chosen as aforesaid, shall elect a president from their own body, and such president, trustees, and all other officers elect shall within five days after such election, take and subscribe before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices.

§ 20. BOARD OF TRUSTEES A BODY CORPORATE.] The president and trustees of such town, and their successors in office, shall constitute a body politic and corporate, by the name of the town of ———, and shall be capable in law to prosecute and defend suits to which they are a party.

§ 21. NOTICE OF SPECIAL MEETING.] Special meetings of the qualified voters may be called by the clerk by order of the trustees of said town, by giving ten days notice thereof in a newspaper, if any be printed in such town; otherwise by posting up such notices in five public places therein, and such notice shall state the object for which each meeting is called.

POWERS OF THE BOARD OF TRUSTEES.

§ 22. POWERS OF BOARD OF TRUSTEES.] The board of trustees shall have the following powers, viz:

1. To have a common seal, and alter the same.

2. To purchase, hold, or convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by this act.

3. To organize fire companies, hook and ladder companies, to regulate their government, and the times and manner of their exercise, to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets; which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice, the trustees may procure and deliver the same to him; and in default of payment therefor, may recover of said owner the value of such ladder, or fire buckets, by suit before the justice of the peace of the town incorporated by the provisions of this act, and costs accrued thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of

ashes; and may under any order by them, entered upon the proper book of the board, visit, or appoint one or more fire wardens to visit, and examine at all reasonable hours, dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove pipes; to prevent outfires, and the use of fireworks, and the discharge of fire-arms within the limits of said corporation, or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps and other water works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires as they shall deem proper.

4. To declare what shall constitute a nuisance, and to prevent, abate and remove the same and take such other measures for the preservation of the public health, as they shall deem necessary.

5. To restrain from running at large, cattle, swine, or other animals.

6. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame, and to authorize the seizure and destruction of gambling apparatus.

7. To license, regulate or restrain auction establishments, traveling peddlers, public exhibitions and the sale of intoxicating liquors within the corporation.

8. To establish and regulate markets, and build market houses, and direct the location of slaughter houses.

9. To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

10. To appoint street commissioners, and also fire wardens, not exceeding three.

11. To prohibit incumbrance of the sidewalks of said town, and riding or driving thereon, except to cross the same.

12. To provide means for keeping and preserving the peace and quietness of such town.

13. To insure the public property of such town.

14. To purchase, lay out and regulate cemeteries.

15. To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation, and to enclose any public square or other public ground within said corporation.

16. To levy and collect annual taxes not exceeding fifty cents on the hundred dollars valuation, and twenty-five cents poll tax on all property subject by law to taxation.

17. To levy and collect annually a tax of one dollar on each male dog and two dollars on each female dog owned and kept within such town.

18. To make and establish such by-laws, ordinances and regulations not repugnant to the laws of this territory as may be necessary to carry into

effect the provisions of this act, and to repeal, alter or amend the same as they shall seem to the board of trustees of such town to require; but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places at least ten days before the same shall take effect.

19. To enact fines, penalties and forfeitures for violations of this act, or of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, penalty or forfeiture: *Provided*, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

§ 23. JURISDICTION OF TRUSTEES OVER PUBLIC GROUNDS.] The trustees shall have jurisdiction over any commons or public grounds belonging to said town and shall have power to regulate, with the consent of a majority of the owners thereof, the banks, shores and wharves of that portion of any navigable streams within the corporate limits, but no ferries heretofore, or which may hereafter be established by law, shall be prejudiced or in any manner affected by the provisions of this act.

OF THE AUDITING AND PAYMENT OF ACCOUNTS.

§ 24. APPROPRIATION OF MONEYS] All moneys however derived belonging to such corporation shall only be appropriated for such objects, and defraying such expenses as accrue, or necessarily arise in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board.

§ 25. OF AUDITING ACCOUNTS.] No account or claim against said town shall be audited or allowed by the board of trustees, unless it be made out fully and itemized, and every such account audited shall be numbered from one upwards, in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

§ 26. PAYMENT OF ACCOUNTS.] No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said town, and attested by the clerk thereof.

OF CORPORATE INDEBTEDNESS.

§ 27. CONTRACTING OF LOANS.] No incorporated town under this act, shall have power to borrow money or incur any debt or liability unless the citizen owners of five-eighths of the taxable property of such town, as evinced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan, and such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same, and for any debt created thereby, the trustees shall add to the tax duplicate of each year successively, a levy sufficient to pay the annual interest on such debt or loan with an addition of not less than five cents on the hundred dollars to create a sinking fund for the liquidation of the principal thereof.

OF THE QUALIFICATION OF OFFICERS.

§ 28. CERTAIN OFFICERS TO GIVE BONDS.] The clerk, assessor, treasurer, marshal and justice of the peace, shall within ten days after their election or appointment, each and severally give bonds payable to the town of ————, with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year.

§ 29. BOOKS AND VOUCHERS TO BE DELIVERED SUCCESSOR.] All books, vouchers, moneys or other property, belonging to the corporation, and in charge or possession of any officer of the same shall be delivered to his successor when qualified.

LEVY AND COLLECTION OF TAXES.

§ 30. BOARD OF TRUSTEES DETERMINE AMOUNT OF TAX.] The board of trustees shall before the third Tuesday in May of each year, determine the amount of general tax for the current year.

§ 31. DUTIES OF ASSESSOR.] The assessor shall assess all property liable to taxation in such town under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday of June of each year.

§ 32. NOTICE OF OPENING OF ASSESSMENT ROLL.] The trustees shall cause the clerk of said corporation to put up notices, in three or more public places in said town, stating that the assessment roll is returned and open for inspection, and that on a day and at a place to be specified in said notice, the trustees will hear, and decide all complaints of, and appeals from, the acts of said assessor.

§ 33. CORRECTION OF TAX LIST.] When the assessment roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property of said town, to such an amount as they may deem necessary, and shall set opposite the name of each person taxed, a description and valuation of the property charged therewith, and the amount of tax assessed against such person, and when such tax list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The assessment roll and tax list, shall be deposited with the treasurer of such town who is hereby charged with the safe custody of the same.

§ 34. WARRANT TO MARSHAL TO COLLECT AND PAY OVER TAXES.] Such warrant shall be under the seal of the corporation, signed by the president and trustees, or a majority of them and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within ninety days, and pay over the same, and make return of said warrant, to the treasurer of said town. Such trustees may renew such warrant, for any period not exceeding thirty days.

§ 35. POWERS OF MARSHAL TO COLLECT TAX.] The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections, and shall be governed by the same rules and regulations as county treasurers and collectors, and shall have authority in like manner to collect by distress and sale of personal property, but if the tax cannot be so made and it becomes necessary to sell real estate such tax shall be certified to the county treasurer, who shall proceed and collect the same as directed by the statute governing tax sales: *Provided*, That this shall not apply to incorporate cities, villages, or towns, for which a different method is provided by their charter.

§ 36. TAX DUPLICATE MAY BE DELIVERED TO COLLECTOR.] The trustees of such town may at their option in the first instance deliver the tax duplicate to the collector of the proper county on or before the first day of August in each year, instead of the marshal of such town, and said collector shall enter said tax, and if delinquent, the interest and penalty thereon, upon his duplicate.

§ 37. COMPENSATION OF COLLECTOR AND TREASURER.] The collector of such county shall collect the corporation taxes upon such duplicate as other taxes are collected and pay the same over to the treasurer of such corporation. The collector and treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services.

POWERS AND DUTIES OF OFFICERS.

§ 38. DUTIES OF TREASURER.] The treasurer of every incorporated town shall so keep his accounts as to show where, and from what sources, all moneys paid him have been derived, and to whom and when such moneys, or any part thereof, have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal, that the money therefor has been paid to said marshal. His books, accounts, and vouchers, shall at all times be subject to the examination of the board of trustees, and it is hereby made their duty to examine the same, at a regular meeting of such board, on some day between the first and last Mondays of April, in each year, and have settlement with the said treasurer.

§ 39. BOARD OF TRUSTEES TO PUBLISH RECEIPTS AND EXPENDITURES.] It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer of said corporation, to publish in a newspaper if one be printed therein, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made for what objects, and the specific amount of each.

§ 40. DUTIES OF CLERK.] The clerk of such town shall have the custody of the records, books and papers of the board of trustees, and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws.

§ 41. POWERS OF MARSHAL.] The marshal of such town shall be a peace officer, and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees, or enforcing the by-laws and ordinances of said town.

§ 42. TRUSTEES TO SUPERINTEND GRADING, &C.] The board of trustees shall superintend the grading, paving and improving of streets, and the building and repairing of sidewalks.

§ 43. DUTIES OF FIRE WARDENS.] The fire wardens shall attend all fires, and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be fire wardens.

§ 44. COMPENSATION OF TOWN OFFICERS.] The trustees, clerk, assessor, treasurer, marshal and justice of the peace, shall respectively receive for their services, such compensation as the board of trustees in their by-laws may decide; and said board shall cause to be paid other officers of such town for their services a just and reasonable compensation.

OF SIDEWALKS AND STREETS.

§ 45. REPAIRING STREETS AND SIDEWALKS.] Whenever two-thirds of all resident owners in number, or in value of real estate, bounding both sides of any street not less than one square, shall petition to have such streets graded, paved or otherwise improved, or the sidewalks thereof built or repaired, or when two-thirds of the owners of real estate in number, or in value, on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board, to levy, and cause to be collected by tax, upon the owner of real estate, or lots on such street or part of a street, according to the last assessed valuation of real estate, such a sum of money as is necessary for the improvement of said street or sidewalk, as in said petition requested.

§ 46. NOBODY EXEMPT FROM HIGHWAY TAX.] Nothing contained in this act shall exempt the inhabitants of any town, from the payment of highway taxes legally assessed, nor from the formation of one or more road districts, irrespective of the corporate limits of such town.

EXTENSION OF CORPORATE LIMITS.

§ 47. ADDITION TO CORPORATION.] When two-thirds of the owners of a tier of out-lots, adjoining an incorporated town, shall sign a petition, asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded, and make an order that said tier of out-lots shall thereafter be included, and constituted a part of said corporation, and the inhabitants residing thereon, and owners thereof, shall be subject to and entitled to all privileges of said corporation.

§ 48. ANNEXING OF ADDITIONAL LOTS.] Whenever there shall be lots laid off, and platted, adjoining such town, and a record of the same is made in the register of deeds office of the proper county, the trustees may by a resolution of their board, extend the boundary of such town so as to include such lots; and the lots thus annexed shall thereafter form a part of such town and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map of survey, defining the boundaries of such addition, in the office of the register aforesaid.

§ 49. PROCEEDINGS OF TRUSTEES TO ANNEX ADDITIONS.] When any town shall desire to annex contiguous territory thereto, not platted, or laid or recorded, the trustees shall present to the board of county commissioners, a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat, accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days notice by publication in a newspaper printed in such town, if any, otherwise in the county, or if none there, by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory, if known, and are residents of the county.

§ 50. COUNTY BOARD TO HEAR AND ORDER ANNEXATION.] The board of county commissioners upon the reception of such petition shall consider the same, and shall have the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order book, specifying the territory annexed with the boundaries thereof, according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation.

DISSOLUTION OF CORPORATION.

§ 51. DISSOLUTION OF CORPORATION.] When an application signed by one-third of the legal voters of any incorporated town, shall be presented to the board of trustees, in writing, asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board, if they deem the reasons good, to call a meeting of the voters of said town by giving ten days notice thereof, as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting, and a poll shall be opened, as at any other corporation election, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes" and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote, signed by the president and attested by the clerk, shall be filed in the register of deeds' office of the county, and such town shall at the expiration of six months from the time of holding such meeting, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town at any special meeting thereof may direct.

§ 52. DISSOLUTION NOT TO AFFECT EXISTING CONTRACTS] No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

§ 53. PROOF OF COMPLIANCE WITH LAW BY TOWN.] Whenever any suit shall be instituted by an incorporated town, it shall not be required to show its compliance with any of the provisions of this act, as to its organization, or publication of by-laws or ordinances, unless the same is controverted by affidavit.

§ 54. INCORPORATED TOWNS MAY ADOPT THIS ACT.] Any town heretofore incorporated by special act, may, by a resolution of the board of trustees, or other municipal board thereof, entered upon the record book of the corporation, become incorporated under this act, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county, and entered by him of record. Trustees and other officers of such incorporated towns, by whatever name designated, performing duties of a like nature to those required of officers created by this act, shall continue to be the officers of such town, by the name as specified in this act, until superceded by the annual election.

§ 55. WHEN DEBT NOT NULLIFIED.] No debt or liability due to or from any incorporated town shall be unpaid by reason of such town being brought within the provisions of this act, and becoming incorporated under it.

§ 56. PROCEEDINGS FOR VIOLATION OF ORDINANCES.] Any person or persons violating the provisions of any ordinance of a town organized under this act, to which there may be a penalty affixed, shall be presented before the justice of the peace of such town, and that the justice of the peace of such town shall have exclusive jurisdiction, and it shall be his duty to hear and determine all offenses against the ordinances of the town.

MISCELLANEOUS PROVISIONS.

§ 57. HOW ORDINANCES MAY BE PROVEN.] All ordinances of the town may be proven by the ordinance book of the town, or the certificate of the clerk of the town, under seal of the town; and when printed in a newspaper, or published in a book or pamphlet form, and purporting to be published or printed by the authority of the town, shall be read and received in all courts and places without further proof.

§ 58. TAXES ASSESSED TO BE A LIEN.] All taxes assessed by the board of trustees of towns incorporated under the provisions of this act, for the grading, paving, or otherwise improving the streets of the town, or for building or repairing sidewalks of the town, shall be a lien on the lots or pieces of ground subject to the same, from the time the amount thereof shall have been ascertained; and in case any error or irregularity should occur in levying or collecting any such tax, proceedings may be taken anew, so as to obviate any such error or irregularity.

§ 59. TAXES—HOW COLLECTABLE, AND PENALTY WHEN DELINQUENT.] Such special tax shall be due and may be collected as the improvements are completed in front of or along or upon any block, lot or piece of ground, or at the time the improvement is completed according as shall be provided in the ordinance levying the tax. Such tax, if not paid within thirty days after becoming due, shall have added thereto a penalty of ten per cent., and shall bear interest from the day of sale, at the rate of twenty-five per cent. per annum, to be computed on the tax, penalty and costs of sale.

§ 60. WHAT COSTS MAY BE INCLUDED IN TAX.] The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing and ditching, or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane as may be deemed best by the board of trustees of such town.

§ 61. MARSHAL'S DUTY IN RELATION TO TAXES.] When the special tax is levied it shall be the duty of the marshal of such town to calculate the amount of tax on any block, lot, or piece of ground, and file a statement thereof with the town clerk, who shall, as soon as the tax is due on any block, lot or piece of ground, issue a certificate describing it, its number and lot and block, and stating the amount of tax due thereon, and the name of the person entitled to the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the contractor, and shall be by the clerk placed in the hands of the marshal, and he shall keep a record of all such warrants and enter on the margin of such records all amounts paid, and by whom paid.

PROCEEDINGS IN CITY JUSTICE'S COURT.

§ 62. DUTY OF JUSTICE ON COMPLAINT BEING MADE.] Whenever complaint shall be made to the justice of the peace of a town organized under the provisions of this act, upon the oath or affirmation of any person competent to testify against the accused that an offense has been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal, or some person specially appointed by such justice of the peace for that purpose.

§ 63. DUTY OF JUSTICE WHEN DEFENDANT APPEARS.] When any person shall be brought before such justice of the peace upon such warrant it shall be his duty to hear and determine the complaint alleged against the defendant.

§ 64. PROCEEDINGS WHERE TRIAL IS POSTPONED.] Upon good cause shown such justice of the peace may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into bond with sufficient security, conditioned that he will appear before such justice of the peace at the time and place appointed, and then and there to answer the complaint alleged against him.

§ 65. JUSTICE TO SUMMON WITNESSES] It shall be the duty of such justice of the peace to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary, and when a trial shall be continued by such of the peace he may verbally notify such witnesses as may be present at the continuance to attend before him to testify in the cause set for trial, and such verbal notice shall be as valid as a summons.

§ 66. TRIALS—HOW GOVERNED.] All trials before such justice of the peace shall be governed by the criminal procedure applicable to justice's courts.

§ 67. WHEN DEFENDANT FOUND GUILTY JUSTICE TO RENDER JUDGMENT.] In all trials for offenses under the ordinances of the town incorporated under and by the provisions of this act, if the defendant is found guilty, such justice of the peace shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with; in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant.

§ 68. JUSTICES PEACE OFFICERS.] Such justice of the peace shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him; and he shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail.

§ 69. APPEALS TO BE ALLOWED AND CONDITIONS.] In all cases before such justice of the peace, an appeal may be taken by the defendant to the district court of the county in which such town is situated; but no appeal shall be allowed unless such defendant shall, within ten days enter into recognizance with sufficient securities, to be approved by such justice of the peace, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof if it should be determined against the appellant.

§ 70. ON CONVICTION—HOW PUNISHED.] Any person convicted before such justice of the peace of an offense under the ordinances of the town, shall be punished by fine as may be regulated by ordinances.

§ 71. POWERS OF JUSTICE—EXCEPTIONS—WHEN JURY CALLED.] The justice of the peace of the town organized under the provisions of this act, shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court, or to process issued, or orders made by him in the same manner and to the same extent as provided for courts of justice of the peace. On the trial of any case in said court, it shall be the duty of such justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial, and become a part thereof;

and any final conviction, sentence, or judgment of said court may be examined by the district court of the county in which such town is situated, on writ of error, which may be allowed by the district court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall, in such proceedings take judicial notice of all the ordinances of such town. Cases before such justices of the peace, arising under town ordinances, shall be tried and determined by such justice of the peace without the intervention of a jury, unless the defendant demand a trial by jury; and when a demand shall be so made, the trial shall be by jury of twelve citizens of such town, having the qualifications of jurors, who shall be summoned by the marshals of such town upon a venire issued by such justice of the peace. That the venire for a jury shall contain eighteen names, three of whom shall be stricken off the list by the defendant, and three by the marshal of such town; the remaining twelve names shall constitute a jury for the trial of a cause. If there is any challenges for cause, such justice of the peace shall try the question in a summary manner, who may examine the challenged jurors under oath.

§ 72. FEES OF JURORS.] Such jurors shall be paid fifty cents for their services as jurors in each case.

§ 73. COSTS TAXED TO DEFENDANT.] In case the defendant is found guilty, the costs of the jury shall be taxed against him as a part of the costs of the case, and the amount thereof shall be a part of the judgment.

§ 74. PROCEEDINGS—HOW GOVERNED.] In all cases not herein specially provided for, the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

CHAPTER 25.

TOWNSITES.

§ 1. CORPORATE AUTHORITIES DETERMINE BY ORDINANCE SHARES OF CLAIMANTS, AND MAKE DEED.] When any city, town, or village, holds the title of any lands in trust, under and by virtue of the acts of congress, approved March 2d, 1867, and June 8th, 1868, the mayor and common council, the president and trustees, or other general corporate authorities thereof, shall ascertain and by ordinance declare the persons who are severally entitled to each and every block, lot, share, or parcel thereof, according to his, her, or their several and respective rights, claim or interest, in and to the same, as they existed in law or equity at the time of the entry of such lands; and thereupon and in accordance with such ordinance, the mayor, president, or other chief officer of such city, village or town, or his successor in office shall, by a good and sufficient deed of conveyance, grant and convey the title of all such blocks, lots, shares or parcels, to the person or persons so declared entitled to the same, or to his, her, or their heirs or assigns.

§ 2. MAYOR AND CLERK EXECUTE DEED.] Every such grant or deed of conveyance shall be executed by the mayor, president or other chief officer of the corporation, signing and acknowledging the same as provided for grants of real property in the civil code; and the clerk or secretary of such corporation shall also attest the same by his official signature and the corporate seal.

§ 3. DEED ONLY PRIMA FACIE EVIDENCE.] When any such block, lot, share or parcel of such land shall be claimed by two or more persons, the respective right, title, claim and interest, of such persons in relation to each other in the same, shall not be determined finally, nor in any way changed, affected, or impaired by reason of such ordinance and grant, except that such grant shall be prima facie evidence only of such title, and shall place the party receiving the same in possession until the title is otherwise determined.

§ 4. EXTENT OF POWERS HEREIN GRANTED.] The powers and duties herein granted and defined, shall also extend to the execution of conveyances for the purpose of defining and settling boundaries and other questions of title to such blocks, lots, shares or parcels of the real property included by the site which may be unoccupied, and over which such corporate authorities have control under said acts of congress; and also to the execution of any map or chart of the survey of such city, town or village, and of grants of any part of such site which has been set apart or dedicated for such purposes, to the corporation or county for public use in any way, and to grant to the public use all streets, avenues, alleys, parks, squares, or other authorized title or easement, for the public use and benefit.

CHAPTER 26.

TOWN AND CITY PLATS.

§ 1. SURVEY AND PLAT NECESSARY.] When any person wishes to lay out a town in this territory, or an addition or subdivision of out lots, such person shall cause the same to be surveyed and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out lots or fractional lots, within or adjoining to said town, giving the names, width, courses, boundaries and extent of all such streets and alleys.

§ 2. LOTS AND SQUARES NUMBERED.] All the in lots intended for sale shall be numbered in progressive numbers, or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out lots shall not exceed ten acres in size, and shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which shall divide or border the same.

§ 3. BASE LINE—HOW FORMED.] The proprietor or proprietors of the town, addition or subdivision of out lots, by themselves or agents, shall, at the time of surveying and laying the same, cause to be planted and firmly fixed in the ground on the line of the main streets of said town two good and sufficient stones, of such size and dimension as the surveyor shall direct. Said stones to be at least two hundred and fifty yards apart, and the lines thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found, shall be distinguished on the plat or map.

§ 4. PLAT OR MAP CERTIFIED AND ACKNOWLEDGED.] The plat or map, after having been completed, shall be certified by the surveyor and the officers; and every person or persons whose duty it shall be to comply with the foregoing requisitions, shall, at or before the time of offering said plat or map for record, acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment shall, by the officer taking the same, be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record.

§ 5. OF LANDS DONATED OR GRANTED—OF LAND FOR STREETS.] When the plat or map shall have been made out and certified, acknowledged and recorded, as required by this chapter, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plat or map, shall be deemed, in law and equity, a sufficient conveyance to vest the fee-simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donor or donors, their heirs or representatives, to said donee or donees, grantee or grantees, for his, her or their use, for the uses and and purposes therein named, expressed and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons, or other public uses, in any town or city or addition thereto, shall be held in the corporate name thereof, in trust to and for the use and purposes set forth and expressed or intended.

§ 6. IF COUNTY NOT ORGANIZED, PLAT RECORDED WHERE.] If the county in which said town or addition is situated shall not be organized, then, in that case, the plat or map shall be recorded in the register's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

§ 7. TOWNS LAID OUT TO COMPLY WITH THIS ACT.] When any town, addition or subdivision has been heretofore laid out and lots sold in this territory by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty, and it is hereby required of the county commissioners, or a majority of them in such county, or proprietor or proprietors who have laid out the same, or his, her or their legal representatives, to have the same fairly, fully and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes: *Provided*, That if the lots shall have been differently numbered and sales made, and they cannot be well changed, they shall be returned as originally stated, but in all other respects the plat or map shall conform to the requisitions of this chapter.

§ 8. FEES OF SURVEYOR AND REGISTER.] The surveyor who shall lay out, survey and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid, the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose.

§ 9. PENALTY IF SALE OR LEASE OFFERED BEFORE THIS ACT IS COMPLIED WITH.] If any person or persons shall dispose of, offer for sale or lease for any time any out or in lots in any town or city, or in any addition to any town or city, or any part thereof, which shall hereafter be laid out until all the foregoing requisitions of this chapter shall have been complied with; every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale.

§ 10. PENALTY IF OFFICER OR OTHER PERSON NEGLECT TO DO DUTY.] If any officer or other person or persons whose duty it is to comply with any of the requisitions of this chapter shall neglect or refuse so to do he or they shall forfeit and pay a sum of not less than ten nor more than one hundred dollars for each and every month he or they shall delay a compliance.

§ 11. TOWNS HERETOFORE LAID OUT MUST BE RECORDED WITHIN THREE MONTHS.] All towns heretofore laid out shall be platted or mapped in accordance within the provisions of this chapter, and the plats or maps of the same shall be recorded within three months from the passage of this chapter in the office of the register of deeds of the proper county.

§ 12. OF FORFEITURES AND LIABILITIES.] All forfeitures and liabilities which may be incurred or arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer, and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this chapter, shall take his receipt therefor and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt against said treasurer on the books of the county commissioners.

§ 13. DISTRICT COURT MAY ALTER OR VACATE TOWNS.] The district courts are hereby authorized and empowered, on application made by the proprietors of any town within their proper county to alter or vacate the same or any part thereof.

§ 14. NOTICE OF APPLICATION FOR VACATION—HOW GIVEN.] If any proprietor or proprietors of a town shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county, if there be one, at least forty days prior to the sitting of the court to which he or they intend to make such application.

§ 15. PROCEEDINGS BEFORE COURT.] If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section of this chapter has been given, the court shall proceed to hear and determine said petition, and may alter or vacate said town or any part thereof, and order their proceedings thereon to be recorded by the clerk with the records of said court.

CHAPTER 27.

ELECTIONS.

§ 1. THIS CHAPTER GOVERNS ALL EXCEPT SPECIAL ELECTIONS.] All elections for territorial, district, county, township, precinct, city, and other officers provided by law, shall hereafter be held and conducted in the manner prescribed in this chapter; except as otherwise specially provided for schools in corporated cities and towns, and for the division of a county into civil townships.

§ 2. GENERAL ELECTION ANNUAL IN NOVEMBER.] The general election shall be held in the several election precincts on the Tuesday next after the first Monday in November in each year, at which election shall be chosen as many officers as are by law to be elected.

§ 3. APPOINTMENT OF JUDGES—PRECINCTS—SERVICE OF NOTICES.] The several boards of county commissioners shall, respectively, at least thirty days prior to the general election in each year, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of election at each precinct and for each of the polls of election, as provided for in this act, and when necessary, to set off and establish election precincts or districts, and the county clerks of the several counties shall make out and deliver to the sheriff, coroner, or other person that may be designated by the board of county commissioners of each county, immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner, or other person appointed as provided in this section, within ten days after receiving such notice, to serve the same upon each of the said judges of election.

§ 4. JUDGES CHOOSE CLERKS—TERM OF JUDGES AND CLERKS.] The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time, fill all vacancies which may occur in the office of judges of elections, at any election precinct within their respective counties.

§ 5. NOTICE TO BE POSTED BY COUNTY CLERK.] The county clerks of the several counties shall, at least thirty days before any general election, and at least ten days before any special election, make out and deliver to the sheriff, coroner, or other person to be designated by them, of their respective counties, three written notices thereof for each election precinct; said notices to be, as nearly as circumstances will admit, as follows, to-wit:

Notice is hereby given, that on the second Tuesday, the ...... day of .... next, at the house of ...., in the town, district. or precinct of ...., in the county of ...., an election to be held for territorial, township or district offices, (naming the offices to be filled as the case may be,) which election will be opened at nine o'clock in the morning, and will continue open until four o'clock in the afternoon of the same day.

Dated this .... day of ...., A. D. 18.., (as the case may be.)

(Signed,) A..... .. B......, County Clerk.

§ 6. OFFICER TO POST SUCH NOTICES, WHEN AND WHERE.] The sheriff, coroner or other person to whom such notice shall be delivered as aforesaid, shall put up in three of the most public places in each township or district, the notice referring to such district, precinct, or town, at least twenty days previous to the time of holding any general election, and at leat eight days previous to the time of holding any special election, and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: One at the house where the election is authorized to be held, and two others at two of the most public places in that vicinity or settlement.

§ 7. ELECTORS TO CHOOSE JUDGES, IF VACANCY.] If any person appointed to act as judge of election, as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district or precinct, as may then be present, at the place of election, and the person or persons so elected to fill the vacancy or vacancies, shall be and are hereby vested, for that election, with the same power as if appointed by the board of county commissioners.

§ 8. OATH OF JUDGES AND CLERKS.] Previous to votes being taken, the judges and the clerks of the election shall severally take an oath, in the following form, to-wit:

I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

§ 9. WHO TO ADMINISTER OATH.] In case there shall be no judge of a court or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerks of the election; and the person administering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

§ 10. WHEN POLLS TO BE OPENED AND CLOSED—ADJOURNMENT FOR DINNER.] At all elections to be held under this act, the polls shall be opened at the hours of nine o'clock in the forenoon and continue open until four o'clock in the afternoon of the same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls, proclamation shall be made that the poll will be closed in half an hour, but the board may, in their discretion, adjourn the polls at twelve o'clock, noon, for one hour, proclamation of the same being made.

§ 11. PENALTY FOR REJECTING LEGAL VOTE.] Any board of judges who shall willfully and knowingly reject any legal vote, shall be subject to a fine of fifty dollars, to be collected before any justice of the peace, for the use of common schools, on the complaint and proof of any person.

§ 12. MANNER OF VOTING AND FORM OF BALLOT.] Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the electors intend to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill such office.

§ 13. ALL NAMES VOTED FOR TO BE ON ONE TICKET.] The names of all persons voted for by any elector at any general election, or special election, shall be on one ballot.

§ 14. PROCEEDINGS IN CASE OF CHALLENGE, AND OATH OF ELECTOR. If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged the qualifications of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall tender the following oath:

> You do solemnly swear (or affirm, as the case may be,) that you are twenty-one years of age, that you are a citizen of the United States (or that you have declared your intention to become a citizen conformably to the laws of the United States, and of this territory, on the subject of naturalization, and have taken an oath to support the constitution of the United States), that you have resided in this territory ninety days, and in this county twenty days, and in this precinct five days next preceding this election; that you have not voted at this election.

And if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected; and, after taking such oath, if the judges have good reason to believe that the person so offering to vote is not a legal voter, before receiving his vote they shall require him to subscribe the oath, which shall be written out and preserved with the poll books for future reference.

§ 15. PENALTY FOR PERJURY.] If any person so offering such vote shall take such oath, knowing it to be false, he shall be deemed guilty of willful and corrupt perjury, and shall, on conviction, suffer such punishment as now is, or shall hereafter be prescribed by law for persons guilty of perjury.

§ 16. JUDGES TO KEEP BALLOT BOX.] There shall be provided and kept by the judges of each election precinct, at the expense of the county in which such precincts are situated, a suitable ballot box with lock and key.

§ 17. STYLE OF BALLOT BOX AND DUTY OF JUDGES.] There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

§ 18. JUDGES TO DEPOSIT BALLOT IN BOX.] When a ballot shall be received, one of the judges, without opening the same, or permitting it to be opened or examined except to ascertain whether it be a single ballot, shall deposit it in the ballot box.

§ 19. CLERK TO KEEP POLL LIST.] Each clerk of election shall keep a poll list which shall contain the names of all the persons voting at such election in their numerical order.

§ 20. DUTY OF CLERKS ON ADJOURNMENT FOR DINNER.] At each adjournment of the polls for dinner, the clerks shall in presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made, in all respects, to correspond.

§ 21. PROTECTING BOX ON ADJOURNMENT FOR DINNER.] The box shall then be opened and the poll list placed therein; and said box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

§ 22. DISPOSITION OF KEY AND BOX.] The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it without opening it, or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly in that condition, deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

§ 23. DUTY OF JUDGE TO CHALLENGE.] It shall be the duty of judge of election, to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

§ 24. JUDGES MAY APPOINT SPECIAL CONSTABLES, COMMIT AND FINE FOR DISORDERLY CONDUCT.] For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district or precinct, and should no constable attend at such elections, the judges of elections are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner, and shall persist in such conduct after having been warned of the consequences, and on refusing to pay the same, to commit him or them to the common jail of the county for any time not exceeding twenty days, or until the same shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law.

§ 25. DUTY OF JUDGES AFTER CLOSING POLLS.] As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall be continued without adjournment until completed.

§ 26. MANNER OF CONDUCTING THE CANVASS.] The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein be taken out and counted by the judges unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot shall be completed; and if upon a comparison of the count with the poll lists, and the appearance of such ballots, a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

§ 27. IF BALLOTS AND POLL LISTS DISAGREE.] If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom as many ballots, unopened, as shall be equal to such excess.

§ 28. DUTY OF CLERKS IN CANVASSING VOTES.] The ballot and poll list agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as nearly as circumstances will admit, in the following form, to-wit:

At an election held at the house of A B, in the town, district or precinct, in the county of ...., and territory of Dakota, on the .... day of ...., the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit: A B had .... votes for delegate to congress; C D had .... votes for the legislative council; E F had .... votes for member of the house of representatives; G H had .... votes for coroner; I J had .... votes for sheriff; K L had .... votes for county commissioner (and in like manner for any other persons voted for). Certified by us, A B, C D, E F, judges of election. Attest: G H, I K, clerks of election.

§ 29. JUDGE TO FORWARD ONE POLL BOOK TO COUNTY CLERK.] The judges of election shall then enclose and seal one of the poll books, and, under cover, direct the same to the county clerk of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said county clerk, at his office, within three days after the closing of the polls, and the other poll book, together with the ballots and ballot box, deposited with the chairman of the board of county commissioners, and the said poll book shall be subject to inspection at any time thereafter.

§ 30. PENALTY FOR NEGLECT TO DELIVER POLL BOOK TO COUNTY CLERK.] If any judge or clerk of election, after being deputed by the judges of election at which he shall have served as judge or clerk, to carry the poll books of such election to the county clerk, or any other person deputed for that purpose shall willfully refuse or neglect to deliver such poll book to the said county clerk, within the time specified by law, safe with the seals unbroken, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

§ 31. COUNTY CLERK TO MAKE SEPARATE ABSTRACTS, ETC.] On the fifteenth day after the close of any election, or as soon as all the returns are received, the county clerk, taking to his assistance a majority of the county commissioners of the county, or the judge of the probate court and one county commissioner, shall proceed to open said returns and make abstracts of the votes in the following manner; the abstract of the votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for the county and precinct officers shall be on one sheet, and it shall be the duty of the said county clerk immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and precinct officers, respectively, and to deliver said certificate to the person entitled to it, on his making application to the county clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the council and house of representatives, the county clerk shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice; and it shall be the duty of the county clerk of each county, on the receipt of the returns of any general or special election to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury. And immediately after canvassing the returns and making the abstracts of votes as provided in this section, the county clerk shall make a certified copy of each abstract and forward the same to the secretary of the territory.

§ 32. DUTY OF REGISTER IN CASE OF TIE.] If the requisite number of county officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the county clerk whose duty it is to compare the polls, shall give notice to the several persons so having the highest and equal number of votes to attend at the office of the proper county clerk, at the time to be appointed by the said county clerk, who shall then and there proceed publicly to decide by lot, which of the persons so having an equal number of votes, shall be declared duly elected, and the said county clerk shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided.

§ 33. TERRITORIAL CANVASSERS—THEIR DUTIES.] And it shall be the duty of the secretary of the territory, with the chief justice and the governor, or a majority of them, to proceed within fifty days after the election, to canvass the votes for delegate to congress, and other territorial officers, and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election; *Provided*, That if either of the persons mentioned in this section as canvassers be a candidate for delegate to congress, such person shall take no part in the canvass of said votes.

§ 34. WHEN RETURNS NOT RECEIVED—MESSENGER, HOW PAID.] That if the returns of election of any organized county in this territory, shall not be received at the office of the secretary of the territory within thirty days after the day of election, the said secretary shall forthwith send a messenger to the county clerk of such county, whose duty it shall be to furnish said messenger with a certified copy of such returns; and the said messenger shall be paid out of the treasury of the territory the sum of ten cents per mile for each mile he shall necessarily travel in going to and returning from the office of the said county clerk; and the territorial treasurer shall present a bill against the county not sending the election returns within time, to the office of the secretary of the territory, and such bill shall be presented to the board of county commissioners of such county for the whole amount paid to such messenger, and the county commissioners, when such bill is presented, shall allow the same in full, and shall issue a warrant for the amount of the bill so presented, and such warrant shall be paid in cash by the county treasurer of such county whenever the same is presented, or as soon thereafter as any money is received in such county treasurer's office.

§ 35. RESIGNATIONS AND VACANCIES.] Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, sheriff, probate judge, register of deeds, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of the member of the council or house of representatives of the legislative assembly, by death, resignation or otherwise, it shall be the duty of the county clerk of the county in which the vacancy has occurred, to officially notify the governor thereof; whereupon the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges of election in his county or district, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provided*, That if there be no session of the legislative assembly between the happening of such vacancy or vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

§ 36. TWO COUNTIES ATTACHED.] When two or more counties are united in one council or representative district, the county clerk of the county last established shall, within twenty days after the day of election, attend at the office of the county clerk of the senior county, and in conjunction with the clerk of the senior county, or counties, shall compare the votes given in the several counties comprising such council or representative district, and said clerks shall immediately make out a certificate of the person or persons having the highest number of votes in such counties, for member or members of the council or house of representatives of the legislative assembly, which certificate shall be delivered to the person entitled to it, on his application to the register of deeds of the senior county, at his office. *Provided*, That the county of Cass be and is hereby declared the senior county in any district within which it is or may be included.

§ 37. DUTY OF GOVERNOR.] Should any vacancy happen in the office of members of the council or house of representatives of the legislative assembly, while in session, by death, resignation, removal, or otherwise, it shall be the duty of the governor immediately upon receiving official notification of the same, to proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

§ 38. COMPENSATION OF JUDGES, ETC.] There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, two dollars per day, and the person carrying the poll books from the place of election to the county clerk's office, the sum of five cents per mile for going and returning.

§ 39. DIVIDED SUBSEQUENT TO ELECTION.] If a vacancy shall occur in the council or house of representatives in this territory, for any cause, and if the county or counties comprising the district in which such vacancy has happened, shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at such election who does not at the time reside within the limits of the organized county or district in which such vacancy occurred: *Provided*, That nothing herein contained shall be so construed as to permit any person to vote so residing within the limits, who has not the other qualifications of an elector.

§ 40. DUTY OF COUNTY CLERKS.] In cases of elections to fill vacancies, as provided for in this act, immediately after receiving the election returns from the several precincts, the county clerk shall, as provided in this act, proceed to canvass the votes returned, and without delay forward to the secretary of the territory the copies of the abstracts of the same.

§ 41. COUNTY CLERK SHALL CANVASS RETURNS.] No election returns shall be refused by any county clerk for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election, or making returns thereof; but all returns shall be received and the votes canvassed by such county clerk, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

§ 42. PENALTY FOR VIOLATION.] If any judge or clerk of election, or county clerk, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county, which money, when collected, shall be for the support of the common schools in said county.

§ 43. PERSON ELECTED.] In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office, shall be deemed to have been elected to that office.

§ 44. NO CIVIL PROCESS SERVED.] During the day on which any general, special, town, precinct, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

§ 45. CANVASSERS—HOW TO PROCEED—PENALTY.] The county clerk shall not construe the statutes concerning the canvassing of the election returns so as to decide all matters of law and fact himself, but the county clerk aforesaid, and the persons called to his assistance, shall constitute a board, a majority of whom shall decide all matters of disagreement, and the said board shall disregard technicalities and misspelling, the use of initial letters, or abbreviations of the name of candidates for office, if it can be ascertained from such votes for whom they are intended, but they shall not count votes polled in any place but at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

§ 46. POLL BOOKS—HOW DELIVERED.] It shall be the duty of the county clerk to provide uniform poll books for the use of his county, each poll book containing a copy of the law prescribing the qualifications of electors, and so much of this act as relates to the duties of judges and clerks of election, and the penalties imposed for offenses; also containing blanks for all entries required to be made in the said poll books, at the time the said clerk delivered notice for an election to the sheriff of his county, as provided for in this act; he shall also deliver to the sheriff two copies of said poll books for an election precinct, and the sheriff shall deliver the same into the hands of one of the judges of election, and the judges of election receiving the said poll books shall deliver or cause the same to be delivered to the clerks on the day of election.

§ 47. WHO ENTITLED TO VOTE.] Every male person above the age of twenty-one years, who shall have been a resident of the territory ninety days, twenty days in the county, and five days in the precinct, next preceding the election, who is a citizen of the United States, or who has declared upon his oath his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citizens of the territory, and shall have complied with the provisions of any law which is now or may in future be in force relating to the registration of voters, shall be entitled to vote, and all persons possessing the qualifications mentioned in this section, and who have resided in this territory nine months, shall be eligible to any office in the said territory: *Provided, however,* That persons shall vote in the precincts where they reside, and not elsewhere.

§ 48. SECRETARY TRANSMITS BLANKS.] The secretary of the territory shall, at least thirty days before every general election, transmit to the county clerks of the several counties, blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law, and the expense of printing such blanks and envelopes shall be paid by the territory.

§ 49. SECRETARY TO INDORSE.] A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at said office on the envelope containing them.

CHAPTER 28.

REVENUE.

§ 1. GENERAL CLASSES OF TAXABLE PROPERTY.] All property, whether real or personal, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing in this territory, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, and of all bankers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property, for that purpose in the manner prescribed by this chapter.

EXEMPTIONS.

§ 2. PROPERTY EXEMPT FROM TAXATION.] The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given:

1. The property of the United States, and of this territory, including school lands.

2. The property of a county, incorporated city or village, or school district, when devoted to public use and not held nor used for pecuniary profit.

3. Public grounds, by whomsoever devoted to the public use, and including all places set apart for the burial of the dead.

4. The engine and implements used for the extinguishing of fires, with the grounds used exclusively for their buildings and for the meetings of fire companies.

5. The grounds and buildings of library, scientific, Educational benevolent and religious institutions, colleges or societies devoted solely to the appropriate objects of these institutions, not exceeding ~~three~~ ten acres in extent, and not leased nor otherwise used with a view to pecuniary profit.

6. The books, papers, furniture, scientific or other apparatus pertaining to the above institutions and used solely for the purpose above contemplated, and the like property of students in any such institutions used for the purpose of their education.

7. Moneys and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not to exceed in amount of total

valuation, aside from the property of students, as above mentioned, the sum prescribed in their charter or act of incorporation.

8. All animals not specified in the next section of this chapter.

9. Private libraries not exceeding one hundred dollars in value.

10. Family pictures.

11. The household furniture of each family, together with the beds and bedding thereof, and all wearing apparel of every person and family actually used for wearing, not to exceed in valuation two hundred dollars.

12. All food and fuel provided in kind, not to exceed provision for one year's time: *Provided*, That no person whom a compensation for board or lodging is received or expected shall be considered a member of a family within the intent and meaning of this chapter.

13. The polls or estates, or both, of persons who, by reason of age or infirmity, may, in the judgment of the assessor, be unable to contribute to the public charge, such opinion being subject to revision by the county board of equalization.

14. Any one-fourth part of any quarter section of prairie land, the same being a legal subdivision on which five acres of timber shall be planted, either by sowing seed or by setting trees or cuttings, and the same to be kept in growing order by cultivation, and not to be more than twelve feet apart each way, together with all improvements thereon, not to exceed in value one thousand dollars, and for a period of ten years from and after the planting of said timber, and any change of ownership of such land shall in no way affect the exemption from taxation as herein provided.

15. All improvements made on real property by setting out either forest or fruit trees, shrubbery or vineyards, which shall not be considered as increasing the value of the land for purposes of taxation.

16. All pensions from the United States, or from any of the states of the Union.

TAXABLE PROPERTY.

§ 3. CLASSES OF PROPERTY SUBJECT TO TAXATION.] All other property, real and personal shall be subject to taxation in the manner provided in this chapter.

1. Lands and lots in towns and villages and cities, including lands bought from or donated by the United States and from the territory, and whether bought on credit or otherwise.

2. Ferry franchises and toll bridges, which for the purposes of this act are to be considered as real property.

3. Lands which are pledged as security for debt by mortgage or otherwise at their actual cash value without any regard whatever to the amount of any such mortgage or incumbrance.

4. Horses and neat cattle, mules and asses, sheep and swine.

5. Money, whether in possession or on deposit, and including bank bills.

6. All credits, whether money, property or labor due from solvent debtors on contract or in judgment, and whether within this territory or not. In making the amount of credits which any person is required to list for himself, or for any other person, company or corporation he shall be entitled to deduct from the gross amount of credits the amount of all bona fide debts owing by such person, company or corporation to any other person, company or corporation: *Provided,* That nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges or to authorize any deduction allowed by this section from the value of any other item of taxation than credits.

7. Mortgages and all other securities, promissory notes and accounts, whether bearing interest or not.

8. Stocks or shares in any bank or company incorporated by this territory, or any other state or territory, and situated in or transacting business in this territory.

9. All public stocks and loans.

10. All household furniture not exempted by the preceding section, and including gold and silver plate, musical instruments, watches and jewelry.

11. All private libraries, for their value over one hundred dollars.

12. All pleasure carriages, stage hacks, omnibusses, and other vehicles for transporting passengers.

13. All wagons, carts, drays, sleighs, and every other description of vehicles, or carriages, and all plows, harrows, reaping and mowing machines, harvesters, steam engines, horse powers, grain threshers, and separators, and all other implements and machinery appurtenant to agricultural labor.

14. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this territory solely or not, if owned wholly or in part by persons who are inhabitants of this territory, for the whole or part so owned by the inhabitant of this territory.

15. Annuities, but not including pensions from the United States or any other state of the Union.

16. All money or capital invested, or employed in manufactories, including buildings, machinery and materials.

17. All money or capital employed in merchandising.

18. All property, real and personal, within this territory, in possession of, or under the control of, or held for sale by any warehouseman, agent, factor or representative in any capacity, of any manufacturer, dealer, or other agent of any such manufacturer of or dealer in agricultural implements or machinery, or other goods, wares or merchandise.

19. Personal property of every description belonging to persons or companies doing freighting or transportation business, and belonging wholly or in part to persons within this territory, for such part as is so owned by said persons.

20. All other property, real and personal, of any kind including improve-

ments on government lands, not specially exempted by the provisions of section two of this chapter.

MANNER OF LISTING PROPERTY.

§ 4. BOARD TO PROVIDE NOTICES AND FORMS.] On or before the twentieth day of January of each year, the board of county commissioners of each county shall provide for the use of the assessor, suitable notices and blank forms for the listing and assessment of all property, and such instructions as shall be needful to secure full and uniform assessment and returns; and a list of all the entered lands in his county or district, subject to taxation.

§ 5. CLASSES AND KINDS OF PROPERTY EACH PERSON TO LIST.] The list of taxable property assessed to each person shall contain:

1. His lands by township, range and section, and any division or part of a section or numbered fractional lot of any section lying in the county in which the list is required. And when such parcel of land is not a congressional division or subdivision, it shall be listed and described in some other mode sufficient to identify it.

2. His town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town.

3. His right and title in any ferry franchise, toll bridge, or part thereof, by the total and actual cash value of the same.

4. Amount of capital employed in merchandising or manufacturing, including all buildings, machinery and appurtenances thereto.

5. Number of horses.

6. Number of mules and asses.

7. Number of neat cattle, over one year of age.

8. Number of sheep over three months old.

9. Number of swine over three months old.

10. Number of carriages and vehicles of every description.

11. Amount of money and credits, including actual and total cash value of all such credits, notes and accounts due.

12. Amount of taxable household furniture.

13. Amount of stock or shares in any incorporated company, or company not incorporated.

14. Amount of all property, machinery or merchandise held and controlled as agent of any manufacturing company or agent thereof.

15. All real property sold by any party or corporation under any form of grant or conveyance, or contract therefor, of which the vender had or has an inchoate contingent or equitable title, right or claim, and which is in the name, possession or use of any vendee who has voluntarily taken such grant or contracts for such title, right or claim: *Provided*, That nothing herein shall be construed so as to affect or impair any right of a person holding or claiming lands from the United States under the homestead or pre-emption laws.

16. All other property not specially enumerated in this section by its actual cash value, except such as is specially exempted by section two of this chapter.

§ 6. BOARD MAY EXTEND LIST.] The above list of items may be extended at the discretion of the board of county commissioners so as to obtain such facts as they may deem desirable.

§ 7. ASSESSMENT TO BEGIN.] The assessor shall in no case commence assessing before the ~~first Monday~~ in February of each year.

§ 8. ALL TAXABLE PROPERTY LISTED—ASSESSOR'S POWER—REFUSAL.] All taxable property, real and personal, shall be listed and assessed each year in the name of the owner thereof as soon as practicable on or after the ~~first~~ ~~Mon~~day in February at its actual cash value at the place of listing on the first day of February, including all property purchased on that day. And in order to make the assessment such assessor shall demand from each person and firm, and from the president, cashier, treasurer or managing agent of each corporation, association or company within his county, a statement, under oath or affirmation, of all the real estate within the county, and personal property, owned by, claimed, or in the use, possession or control of such person, firm, corporation, association or company. If any person, firm, officer or agent shall neglect or refuse, on demand of the assessor, to give, under oath or affirmation, the statement required by this section the assessor shall ascertain and estimate from the best information he can obtain the number, amount and cash value of all the several species of property required, and shall list the same accordingly, and the value so fixed by the assessor shall not be reduced by the county board of equalization.

§ 9. UNKNOWN OWNERS—OATH TO LIST.] If the owner of any property not listed by another person shall be absent or unknown the assessor shall ascertain and estimate the value thereof, and if the name of such owner be known to the assessor the property shall be assessed in his, her or their name; if unknown to the assessor the property shall be assessed to "unknown owners." The list shall be signed and sworn to by the person making it and the oath thereto may be administered by the assessor or his deputy, or by any other officer authorized to administer oaths, and shall be certified by him, and the oath may be printed upon the blank form, and shall be in substance as follows:

I, A B, do solemnly swear (or affirm) that I have listed above and within all the lands, town and city lots, personal property, money and credits, subject by law to taxation, and owned, used, possessed or controlled by me, or by law required to be listed by me for any other person or persons, as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, factor, bailee or agent, according to the best of my knowledge.

§ 10. ASSESSOR MAY REQUIRE OATH OF OWNER, OR OTHER PERSON—PENALTY.] In case any person required to render the list under oath fails or refuses to do so, the assessor, in order to perform his duty, as required in section eight of this chapter, may examine on oath any person whom he supposes to have knowledge in relation to the property required to be listed; and if any such person refuse to testify when so required he shall forfeit the sum of five dollars, to be recovered in a civil action in the name and to the use of the proper county; and the assessor shall make a minute of the names of persons refusing to swear to such list, or to testify in relation to property, and shall note the same on the list, and return the same to the board of county commissioners, and the county board of equalization shall add fifty per cent. thereof to the amount in value of property returned by the assessor as the list of the person so refusing to swear or affirm.

§ 11. LIST OF REFUSALS TO SWEAR.] The said statements of persons refusing to swear, shall be endorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order, and return them to the office of the county clerk by the first Monday of May next ensuing, at which time, or before, he shall also prepare and deliver his assessment roll. All property is to be valued by the assessor, except such as is herein required to be valued by the owner, agent or other person having control of the same.

§ 12. ASSESSOR'S OATH TO ROLL.] The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

I, A. B., county or township assessor, in and for the.........county, Dakota Territory, do solemnly swear that the value of all property, moneys and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement, that in every case where I have been required to ascertain the amount of value of the property of any person or body corporate, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value therefor is set forth in the above returns. And that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessments of property for taxation.

§ 13. SWORN FALSE LIST, PERJURY.] If any person shall willfully make or give under oath or affirmation, a false list of his, her or their taxable property, or a false list of the taxable property in the use or possession, or under the control of him, her or them, and required by law to be listed by him, her or them, such person shall be deemed guilty of perjury; and upon conviction thereof shall be punished therefor as is by law provided for the punishment of perjury.

§ 14. CREDITS DEFINED.] The term "credits," as used in this act, includes every claim and demand for money, labor, or other valuable thing. And every annuity or sum of money receivable at stated periods, and all moneys in property of any kind, and secured by deed, mortgage, or otherwise; but pensions from the United States, or any state, are not included in the above terms.

BY WHOM AND WHERE LISTED.

§ 15. EVERY INHABITANT, UNLESS EXCEPTED, TO LIST.] Every inhabitant of this territory, of full age and sound mind, unless excepted by the provisions of this act, shall list all property subject to taxation in this territory of which he is the owner, or has the control or management in the manner herein directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by his mother, if living; if not, then by the person having the property in charge; of a married woman, by her husband; but if he be unable or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee; and the personal property of a decedant, by the executor, administrator, or heirs; of a body corporate, company, society or partnership, by the principal accounting officer, agent or partner; property under mortgage or lease, to be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

§ 16. COMMISSION MERCHANTS, ETC.] Commission merchants, and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this territory, are, for the purpose of taxation, required to list all the property in their possession.

§ 17. PROPERTY LISTED, ASSESSED AND TAXED—WHEN—WHERE.] All personal property is to be listed, assessed and taxed in the county where the owner resides, on the first of ~~February~~ January of the then current year, or where the property is kept. But if the owner resides out of the territory, it is to be listed and taxed where it may be at the time of listing. And if the agent or person having charge of such property neglects to list it, he will be subject to the penalty hereinafter provided. 1889 p 147

§ 18. LISTI N BEHALF OF ANOTHER.] A person required to list property in behalf of another, shall list in the same county or township in which he would be required to list if it were his own, except as herein otherwise directed. But he must list it separate from his own, naming the person to whom it belongs. But the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs, without enumerating them.

§ 19. HOW COMPANIES TO LIST PROPERTY AND MONEY—DUTY OF AUDITOR AND COMMISSIONER.] The president, secretary, superintendent, or other principal accounting officer within the territory at the time of the assessment, of every railroad company, turnpike company, plank road company, bridge or ferry company, insurance company, telegraph company, or any other joint stock company, except banking or other corporations whose taxation is specifically provided for in this chapter, for whatever purpose they may have been created, whether incorporated by any law of this territory or not, where any portion of said property, at the time of the assessment, is situated in more than one county, shall list for taxation, verified by the oath or affirmation by the person so listing, all the personal property, which shall be held to include road bed, depots, wood and water stations, poles and wire, bridge and boats, books, papers, office furniture and fixtures, and such other realty as is necessary for the daily business operations of said road, bridge, insurance or other incorporation. Moneys and credits of such company or corporations within the territory, at the actual value in money, in manner following, to wit: In all cases, except as hereinafter provided, a full return of all property shall be made to the auditor of the territory, on or before the first Monday of February, annually, together with a statement of the amount of such property, which is situated in each organized county, precinct or township, incorporated village or city therein. The value of all movable property shall be added to the stationary and fixed property: *Provided*, That whenever the whole of the property of any company aforesaid, shall be in one county only, the return shall be made to the assessor or assessors, in the same manner as returns of other property are made. If the return, aforesaid, shall not be received by said auditor within ten days after the first Monday in February, aforesaid, it shall be the duty of the auditor to procure the information aforesaid, in any manner that may appear to be most likely to secure the same correctly, and for that purpose shall address a written request to the officer who has omitted or neglected to make the return aforesaid; and it shall be the duty of the auditor, on or before the first Monday of April, or so soon thereafter as he shall have procured the necessary information, to certify to the county clerks of the several counties in which said property, or any part thereof, shall be situated, the amounts thereof, specifying the several amounts included in each organized county or township, incorporated city or village in said county, which amounts, when so received by the several county clerks, shall be placed on the list of taxable property returned to them by the several assessors for such county or townships, incorporated cities or villages. The auditor shall certify whether the return was made by the proper officer, or whether the valuation was procured by himself; and it shall be the duty of the county commissioners to equalize the valuation of such property in the same manner as of other property, and if the return has not been made by the proper officer at the proper time, as required by this act, it shall be the duty of said county commissioners to add, not exceeding fifty per cent., to the valuation thus before them: *Provided*, That shares of stock in all national banks, held by any person or persons in the territory, shall be assessed at their par value, and the owner or owners thereof shall be required to pay tax thereon the same as though they were shares in banks chartered and incorporated by the laws of the territory, or by the laws of any other state or territory of the United States; *And provided, further*, That for the purposes of taxation no discrimination shall be made between any national bank and any other bank doing business in this territory under the laws thereof.

§ 20. PERSONS DOING BUSINESS IN MORE THAN ONE COUNTY.] When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county; and credits not existing in, nor pertaining especially to the business in any one county, are to be listed and taxed in that county where his principal place of business may be; each individual of a partnership is liable for the taxes due from the firm.

§ 21. INSURANCE COMPANIES.] Insurance companies, of every description, transacting business in this territory, shall be taxed in the same amount and at the same rate that all other property is taxed, upon the amount of premiums taken by them during the year previous to the listing in the county where the agent conducts the business. And the agent shall render the list, and shall be personally liable for the tax, and if he refuses to render the list, or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may at their discretion, add fifty per cent. to the amount returned by the assessor.

§ 22. DEPRECIATED BANK NOTES.] Depreciated bank notes and depreciated stocks, or shares in corporations or companies, may be listed at their current value and rate; credits shall be listed at such sums as the person listing them believes will be received, or can be collected, and annuities at the value which the person listing believes them to be worth in money.

§ 23. ENTITLED TO DEDUCT BONA FIDE DEBTS ONLY.] In making up the amounts of credits which any person is required to list he will be entitled to deduct from the gross amount the amount of bona fide debts owing by him, but no acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor. And if there are other sureties able to contribute then so much only shall be deducted as he in whose behalf the list is made will be bound to pay or contribute: but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance; nor on account of an unpaid subscription to any society; nor on account of a subscription to or installments payable on the capital stock of any company or corporation, nor upon any account whatever, unless such deduction be made from the amount of moneys or credits, or both, by such person listed.

§ 24. DEFINITION OF MERCHANT.] Any person owning or having in his possession or control in this territory, with authority to sell the same, any personal property, purchased either within or out of the territory, with a view of selling the same at an advance price or profit, or which has been consigned to him for the purpose of being sold within the territory, shall be held to be a merchant for the purposes of this act; such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the value of such property in his possession or control on the first day of February.

§ 25. HELD AS MANUFACTURER—WHEN.] Any person who purchases, receives or holds personal property of any description for the purpose of adding value thereto by any process of manufacturing, refining, purifying, or by the combination of different materials with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this act, and he shall list for taxation the value of such property in his hands estimated as directed in the previous section in case of merchants, but the value shall be estimated upon the materials only entering into the combination or manufacture.

OF ASSESSMENT ROLL.

§ 26. MAKING AND DELIVERY OF ROLL—CONTENTS—FORM.] On or before the first Monday of May, annually, the several county assessor shall make out and deliver to the county clerk an assessment roll, consisting of the following items, to-wit:

1. A list of all the taxable lands in such county in numerical order, beginning with the lowest numbered section, in the lowest numbered township, in the lowest numbered range in the county, and ending in the highest numbered section, township and range, with the number of acres in each tract set opposite the same in a column, provided for that purpose, and the assessed value thereof in another column, and the name of the owner or person listing the same in another column, with the columns of acres and values footed up. Also stating the number of the school and road district in which such property and the owner thereof is situated. Such list shall be as nearly as practicable in the following form:

RETURN OF TAXABLE LANDS IN .... COUNTY, DAKOTA, AS ASSESSED FOR THE YEAR 18...

Part of Section.	Section.	Township.	Range.	Acres.	Value.	Owners' Name.

2. A list of all the town lots in each town or city in each county, in like numerical order, with the valuation of each lot or part of lot, and the name of the person listing the same, opposite with the column of values footed up substantially in the following form:

RETURN OF LOTS IN THE CITY (OR TOWN) OF ....., IN ..... COUNTY, DAKOTA, ASSESSED FOR THE YEAR 18...

Block.	Lot.	Value.	Owner.

3. A list in alphabetical order of all the persons and bodies corporate in whose names any property or anything taxable other than the real estate, has been listed, with a sufficient number of columns opposite each name in which to enter the numbers or values, or both, of the several species of property or other interests required by law to be listed, with the columns of numbers and values footed up. Such list shall be as nearly as practicable in the following form, to-wit:

RETURN OF PERSONAL PROPERTY IN ...... COUNTY, DAKOTA, ASSESSED FOR THE YEAR 18...

NAMES	Merchandise	Manufactures	Horses	Value	Mules and Asses	Value	Cattle	Value	Sheep	Value	Swine	Value	Carriages	Value	Money and Credits	Household Furniture	Stock or Shares	Other Personalty	Total	Poll Tax	REMARKS.

REFUSAL TO LIST.

§ 27. RETURN OF REFUSALS TO SWEAR.] In every case where a person is required to list property for himself, or in behalf of another, if he shall neglect or refuse to list the same, the assessor shall proceed as directed in section ten of this chapter, and in the return of personal property, opposite the name of such person, he shall write the words "by the assessor," when the list was made by himself or his deputy, together with the words "absent," or "sick," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it; and a neglect to make it shall be taken as a refusal to do so.

COUNTY BOARD OF EQUALIZATION.

§ 28. COMMISSIONERS CONSTITUTE BOARD—POWERS—LIMITATION.] The board of county commissioners of each county shall constitute a board of equalization for the county, and said board or a majority of the numbers thereof, shall hold a session of not less than two days at the county seat, commencing on the first Monday of May in each year, for the purpose of equalizing and correcting the assessment roll in their county; and in order to equalize and correct such assessment roll, they may change the valuation and assessment of any property real or personal upon the roll, by increasing or diminishing the assessed valuation thereof as shall be reasonable and just, to render taxation uniform: *Provided*, That the aggregate assessment shall not be materially changed thereby.

§ 29. FURTHER POWERS EQUALIZING BOARD.] The said board of equalization must also place upon and add to the assessment roll any property real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter for the same a reasonable, just and uniform taxation. During the session of said board any person, or his attorney or agent, feeling aggrieved by anything in the assessment roll may apply to the board for the correction of any alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as shall be just, and if any person returned as refusing to render a list, or to be sworn thereto, or to the list of the property of another returnable by him, can show good cause for such failure or refusal the penalty herein provided may be remitted: *Provided*, That in equalizing the assessment of all property, personal and real, said board must be governed by the value of such property on the first day of February preceding, or, if that cannot be reasonably and justly ascertained, by its average value during the year preceding.

§ 30. CLERK OF BOARD.] The county clerk of the county shall be the clerk of said board of equalization for the county.

ABSTRACT OF ASSESSMENT ROLL.

§ 31. CLERK MAKES AND FORWARDS ABSTRACT TO AUDITOR.] As soon as practicable after the assessment rolls are equalized and corrected, as provided in the two preceding sections, and before the third Monday of May next ensuing, the county clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the county and the total value thereof.

The total valuation of town lots.

The amount of property invested in merchandise.

The amount of property invested in manufactures.

The number of horses and their total value.

The number of mules and asses, and their total value.

The number of cattle and their total value.

The number of sheep and their total value.

The number of swine and their total value.

The number of carriages and vehicles of every kind, and their total value.

The total value of money and credits.

The total value of household furniture.

The total value of stock or shares.

The total value of all other personalty not enumerated under the foregoing heads, and the number of polls.

Which abstract the clerk is directed to transmit without delay to the auditor of the territory, and the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable; and it shall be the duty of the auditor of the territory to furnish such forms for the use of the county commissioners, assessors, clerks, and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the territory.

TERRITORIAL BOARD OF EQUALIZATION.

§ 32. WHO CONSTITUTE—MEETING—DUTIES.] The governor, territorial auditor and treasurer, shall constitute the territorial "board of equalization," (or the majority of them) and said board of equalization shall hold a session at the capital of the territory, commencing on the second Monday of June of each year, and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the territorial tax, to be levied for the current year, together with any other general or special territorial taxes required by law to be levied, and to equalize the levy of such taxes throughout the territory; but such equalization shall be made by varying the rate of taxation on the different counties, in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

RATE OF TAXATION AND LEVY OF SAME.

§ 33. TERRITORIAL, COUNTY AND SPECIAL TAXES LIMITED.] The rate of the general territorial tax shall not be less than one-half mill, nor more than five mills on the dollar valuation; for ordinary county revenue, including the support of the poor, not more than four mills on the dollar; for roads and bridges, a poll tax of one dollar and a half, or one day's work, on every male person between the ages of twenty-one and fifty years; a bridge tax not to exceed two mills on the dollar; and a road tax not exceeding two mills on the dollar valuation, to be paid in money or in labor at the rate of one dollar and fifty cents per day, at the option of the person so taxed, and the certificate that the person named therein has actually performed eight hours labor for each day's work so certified, shall be received by the county treasurer in discharge of said tax to the amount so certified. For county sinking fund, such rate as in the estimation of the board of county commissioners, will pay one year's interest on all the outstanding debt on the county, with fifteen per cent. on the principal.

§ 34. AUDITOR TRANSMITS RATE OF TERRITORIAL TAX.] On or before the third Monday in June in each year, the territorial auditor is required to transmit to the county clerk of each county, a statement of the rate of taxation required in said county for the general territorial tax, as directed to be levied and collected by the territorial board of equalization. Should the territorial board of equalization fail to fix the rate of taxation, in any or all of the counties, then the auditor is required to notify the county clerk of the rate to be levied and collected in such county or counties which must not exceed two mills on the dollar of valuation and must be in even mills, or in mills and tenths of mills, and uniform for all the counties.

§ 35. COUNTY TAX WHEN LEVIED. On the first Monday in July of each year, the board of county commissioners must meet at the county seat to levy the necessary taxes for the current fiscal year, and they may levy the taxes at any time after the said first Monday of July, if the statement from the territorial board of equalization has not then been received; but such levy must not be postponed for more than ten days, and they shall levy the taxes as herein directed.

§ 36. TERRITORIAL TAX THREE MILLS, WHEN.] The rate of the general territorial tax shall be as directed by the territorial board of equalization, or by the territorial auditor, but in case the statement of the levy of such taxes, as hereinbefore directed, has not been received by the county clerk within ten days after the said first Monday in July, then the said board of county commissioners shall levy the general territorial tax at the rate of three mills on the dollar of valuation.

§ 37. CLERK MAKES LIST—CONTENTS—ORDER.] As soon as practicable after the taxes are levied, the county clerk shall make out a tax list containing:

1. A list in alphabetical order of all the persons and bodies corporate in whose name any property other than real estate has been listed with the amount or valuation thereof in a separate column opposite the name, and total amount of all the taxes carried out in another column.

2. A list of all the taxable lands in the county (not including town lots) in numerical order, commencing with the lowest numbered section in the lowest numbered township in the lowest numbered range in the county, and ending with the highest numbered section, township and range, with the names of the persons or parties in whose name each subdivision was listed opposite each subdivision on the margin or in a column provided for that purpose, with valuation of each tract, and several species of taxes and the total of all the taxes carried out in separate columns opposite each tract in the same manner as provided in the alphabetical list of names.

3. A list of the city or town lots in each city or town in the county, commencing with the lowest number and ending with the highest number in each city or town, with the name of the person or party listing each lot or part of lot opposite the same, and the valuation and several species of taxes and total taxes carried out in separate columns in the same manner as hereinbefore provided in respect to personal property and lands.

§ 38. DUPLICATE LIST FOR TREASURER.] The tax list when completed, shall be kept by the county clerk as the property of the county. The clerk shall also prepare a duplicate of the tax list of his county, and deliver the same to the county treasurer on or before the first day of October following, the date of the levy for the current year.

§ 39. FORM OF LIST AND DUPLICATE.] The tax list and duplicate shall be as nearly as practicable in the following form, to-wit:

TAX LIST FOR 18.., ... COUNTY, DAKOTA.

NAMES.	Part of Section	Section	Township	Range	Acres	Value	Name of Town	Lot	Block	Value.	Personalty	Territorial Tax	County Tax	County Sinking Fund Tax	Land Road Tax	Poll Tax	District School Tax	Total	REMARKS.

§ 40. ENTRY REQUIRED ON LIST AND DUPLICATE.] An entry is required to be made upon the tax list and its duplicate, showing what it is, and for what county and year it is, and the county commissioners shall attach to the lists their warrants under their hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied according to law; and no informality in the foregoing requirements shall render any proceedings for the collection of taxes illegal; the county clerk shall take the receipt of the county treasurer on delivering to him the duplicate tax list with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

COUNTY TREASURER, AND HIS DUTIES.

§ 41. COUNTY TREASURER COLLECTOR OF TAXES.] The county treasurer of each county shall attend at the county seat at all times, to receive the taxes not yet paid, and he is also authorized and required to collect, so far as practicable the taxes remaining unpaid on the list of the former year or years. In all cases where taxes are paid, he shall give a receipt to the person paying the same.

§ 42. WARRANTS RECEIVABLE TO FUND DRAWN ON.] Territorial warrants are receivable for the amount payable into the territorial treasury, on account of the general territorial tax, and county warrants are receivable at the treasury of the proper county for the amount of county tax payable into the county treasury, except when otherwise provided by law; and city warrants shall be received for city taxes, and school warrants shall be received for school taxes in the districts where such warrants are issued; but United States treasury notes, or their equivalent, only are receivable for such taxes as are or may be required by law to be paid in cash; and road and poll taxes may be discharged, as provided in section thirty-three.

§ 43. TREASURER'S RECEIPTS DUPLICATES.] Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date, amount, and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall within one month be filed by the treasurer, with the county clerk, and such duplicate receipts shall specify the land or other property on which such tax was assessed according to its description on the tax duplicate, or in some sufficient manner, and shall also specify the amount of each separate and distinct fund, in separate or distinct lines or columns, and whether the said separate or distinct funds were paid in cash or in territorial warrants, county or road order, or supervisors' receipts, as the case may be.

§ 44. FORM OF RECEIPT.] The tax receipt and duplicate shall be substantially in the following form, to wit:

No. ...... $ ....

TREASURER'S OFFICE, ... COUNTY, DAKOTA, }
.... 18 ... }

Received of ...., ... dollars, in full of the following taxes for the year 18.., on annexed property or real estate.

Part of Section or Name of Town.	Section or Lot.	Town or Block.	Range or Lot.	Acres or Block.	KIND OF TAX.	AMOUNT OF TAXES.			Total.
						Paid in Cash	Paid in War'nts	Interest	
					Territorial.				
					County.				
					Road.				
					Poll				
					School				
					Advertising.				

§ 45. CLERK AUDITS DUPLICATE.] It shall be the duty of the county clerk, on receiving any duplicate tax receipt from the treasurer, forthwith to examine the same and compare it with the tax list in his possession, and see if the total amount of taxes and the several amounts of the different funds are correctly entered and set forth in such receipt, and in case it shall appear that the treasurer has not collected the full amount of taxes and interest which, according to the tax list and the terms of the receipt he should have collected, then the county clerk shall forthwith charge the treasurer with the amount such receipt falls short of the true amount, and the treasurer shall be liable on his official bond to account for and pay over the same.

§ 46. RECEIPTS NUMBERED CONSECUTIVELY.] All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this territory.

§ 47. WHAT TREASURER SHALL WRITE ON DUPLICATE.] Whenever any taxes are paid the treasurer shall write on the tax duplicate opposite the description of the real estate or property whereon the same were levied, the word "paid," together with the date of such payment and the name of the person paying the same, and the county clerk on receiving the duplicate receipt shall forthwith make the same entries on the tax list in his possession.

§ 48. TREASURER TO KEEP A CASH BOOK.] The county treasurer is required to keep a cash book, in which he shall enter an account of all money by him received specifying in proper columns provided for that purpose the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether territorial, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders or receipts, each in a separate column, and the total amount for which the receipt was given in another column, and the treasurer shall keep his account of money received for and on account of taxes, separate and distinct from moneys received on any other account, and shall also keep his account of money received for and on account of taxes levied and assessed for any one year, separate and distinct from those levied and assessed for any other year, and all entries in said cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

§ 49. MISCELLANEOUS DUPLICATE RECEIPTS.] Whenever the treasurer receives money, warrants or orders on account of licenses, fines or any other account except taxes, he shall make out duplicate receipts for the same, and deliver one to the person making such payment, and the other to the county clerk, as provided in the case of tax receipts, and shall forthwith enter the same in his cash book as in case of money received for taxes, but in a separate place and with a separate and distinct series of numbers of receipts issued therefor.

§ 50. FORM OF CASH BOOK.] The cash book above provided for shall be as nearly as practicable in the following form, to-wit:

TREASURER'S CASH BOOK, ... COUNTY, DAKOTA.

Date..........	Number of receipt...	By whom paid......	Territorial Fund.		County Fund.		Co. Sinking F'd		Land Road F'd.			Poll Fund.			District School Fund.	Advertising Fees..	Total..........	Remarks..........
			Paid in cash...	Paid in warrants.	Paid in cash...	Paid in warrants.	Paid in cash. .	Paid in warrants.	Paid in cash...	Pd in warrants	Pd in receipts	Paid in cash . .	Pd in warrants	Pd in receipts.				

§ 51. CLERK'S DUPLICATE OF TREASURER'S CASH BOOK.] The county clerk is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same.

§ 52. ERRORS AND OMISSIONS.] If on the assessment roll or tax list there be any error in the name of the person assessed or taxed, the name may be changed, and the tax collected from the person intended, if he be taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon his assessment roll, and assess the value, and the treasurer shall enter it upon the tax list, and collect the tax as in other cases.

§ 53. DEMAND FOR TAXES NOT NECESSARY.] No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law to attend at the treasurer's office at the county seat and pay his taxes; and if any person neglect so to attend and pay his taxes until after the first day of November next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale; *Provided*, That in case any person having only personal property assessed and upon which the taxes are unpaid, shall, in the opinion of the treasurer, be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands.

DELINQUENCY, PENALTY AND LIEN OF TAXES. February

§ 54. TAXES DELINQUENT—WHEN.] On the first Monday of ~~January~~ of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent, and shall draw interest at the rate of ten per cent. per annum from the date of such delinquency.

§ 55. TEN PER CENT. PENALTY.] To all taxes which remained unpaid at the time the same became delinquent, there shall be added as a penalty, ten per cent on the amount so remaining unpaid, which shall be added to the amount assessed, and collected by the county treasurer.

§ 56. LIEN OF TAXES DEFINED.] Taxes upon real property are hereby made a perpetual lien thereupon against all persons and bodies corporate except the United States and the territory, and taxes due from any person upon personal property shall be a lien upon any real property owned by such person, or to which he may acquire a title. All taxes shall, as between vendor and purchaser, become a lien upon real estate on and after the first day of October in each year.

COLLECTION BY DISTRESS.

§ 57. DISTRAINED GOODS AT EXPENSE OF THE OWNER.] When the treasurer distrains personal property, he may keep it at the expense of the owner, and he shall give notice of the time of the sale within five days after the day of the taking, in the manner that constables are required to give notice of the time of the sale of personal property on execution; and the time of the sale shall not be more than ten days from the day of the taking, but he may adjourn the sale from time to time for a period not to exceed three days, and shall adjourn once at least when there are no bidders: and in case of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, fees for sale, fees for levying on the property, and mileage, to be the same as allowed by law to sheriffs for levying an execution on personal property, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

§ 58. IN CASE TREASURER BE RESISTED IN EXECUTION OF DUTY.] If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

§ 59. TAXES RECEIVABLE TILL OTHERWISE COLLECTED.] The treasurer shall continue to receive payment of all taxes after the first day of November, upon the above terms, until collected by distress and sale.

TAX SALE.

§ 60. TREASURER ADDS LOCAL TAXES.] Whenever, in the collection of any district, town, city or local tax, which may have been levied according to law, the collector is not able to make the tax by distress and sale of personal property, and real estate is to be sold for the same, it shall be the duty of the collector of the tax to send such delinquent list to the county treasurer on or before the fifteenth day of July of each year, and the county treasurer shall receive the delinquent list, and advertise the same at the same time he advertises the sale of real estate for delinquent taxes, as hereinafter provided, by adding the amount of such delinquent district, town, city or local tax to the amount of delinquent territorial, county and other taxes, and shall sell such lands for the purpose of paying all such delinquent taxes as hereinafter directed, and shall credit the proper district, town, city or locality for the amount of taxes so collected, which shall be subject to the order of the proper collecting officer.

§ 61. TREASURER'S NOTICE OF SALE.] The treasurer shall give notice of the sale of real property, by publication thereof once a week for three consecutive weeks, commencing the first week in August preceding the sale, in a newspaper in his county, if there be one, and if there be no paper published in his county, shall give notice by a written or printed notice posted on the door of the court house, or building in which courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale; such notice shall contain a notification that all lands, on which the taxes of the preceding year (naming it) remain unpaid, will be sold, and the time and place of the sale, and said notice must contain a list of the lands to be sold, and the amount of taxes due. The treasurer shall add to each description of land so advertised, the sum of ten cents for each description other than town lot, and for each town lot the sum of five cents, to defray the expenses of advertising, which amount shall be paid by the county treasurer at the expiration of the sale, upon the affidavit of the publisher.

§ 62. SHALL OFFER LANDS FOR SALE.] That on the first Monday of September in each year, between the hours of nine o'clock, A. M., and four o'clock, P. M., the treasurer is directed to offer at public sale, at the court house, or place of holding courts in his county, or at the treasurer's office, where, by law, the taxes are made payable, all lands, town lots, or other real property, which shall be liable for taxes of any description for the preceding year or years, and which shall remain due and unpaid, and he may adjourn the sale from day to day until all the lands, lots, or other real property have been offered, and no taxable property shall be exempt from levy and sale for taxes.

§ 63. METHOD OF SALE—PARCELS—HOMESTEAD RESERVED.] The person who offers to pay the amount due on any parcel of land for the smallest portion of the same is to be considered the highest bidder, and when such a portion constitutes a half or more of the parcel it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided, in such case, lengthwise by a parallel with the proper lines of the lots. If the portion taken be less than one-half of the parcel it is to be taken from the southeast corner, in a square form as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications. The homestead shall not be sold for any taxes due from the owner thereof until all other land, town lots, or other real property shall have been first sold, and to that end the quantity of land offered for sale may be obtained by drawing the division line in any direction so as to avoid the homestead, and when the homestead constitutes a part of the tract or parcel sold, and is not yet ascertained, the court may in the action hereafter authorized, at the suggestion of either party, cause proceedings to be had similar to that required in relation to mechanics' liens, for the ascertainment of the homestead. And in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set apart from the homestead.

§ 64. PERSONS BIDDING FAILING TO PAY.] Should any person so bidding fail to pay the amount due, the treasurer may again offer land for sale if the sale has not closed, and if it has closed he may again advertise it specially and by description, by one written or printed notice posted for two weeks on the door of the court house or place where courts are usually held, after which it may be sold at public sale; or the treasurer may recover the amount by civil action, brought in the name of the county in which the sale was held.

§ 65. FILING RETURNS OF SALE.] On or before the first Monday of October following the sale of real property the treasurer is required to file in the office of the county clerk of his county a return of his sale of land (retaining a copy in his office) showing the lands sold, the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings.

§ 66. DESCRIPTIONS ENTERED NUMERICALLY.] The description of real estate in such returns shall be entered in the same numerical order as required in the tax list, and such return shall be as nearly as may be in the following form, to-wit:

TREASURER'S SALE BOOK. DELINQUENT TAXES OF 18.., ... COUNTY, DAKOTA.

Date of Sale.	Part of Section or Name of Town.	Section or Lot........	Town or Block..........	Range or Lot.......	Acres or Block.	Names of Purchaser.	Amount Sold for	Subsequent Taxes Paid.....	Total	By whom Redeemed.	Am't Paid for Redemption.	Redemption Money.......	Remarks.

CERTIFICATES OF PURCHASE.

§ 67. PURCHASER ENTITLED TO CERTIFICATE.] The purchaser of any tract of land sold by the county treasurer for taxes will be entitled to a certificate in writing describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds; such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pay any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale; he shall have the same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "sold for tax at public sale." Such certificate shall be substantially in the following form:

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

THE TERRITORY OF DAKOTA, } ss.
........County. }

I, ..., treasurer of the county of ...., in the territory of Dakota, do hereby certify that the following described real estate in said county and territory, to-wit: [describing the same] was, on the .... day of ...., 18 .., duly sold by me in the manner provided by law for the delinquent taxes of the year 18 .. thereon, amounting to .... dollars, including interest and penalty thereon, and the costs allowed by law, to ...., for the sum of ...... dollars, he being the highest and best bidder for the same.

And I further certify that unless redemption is made of real estate, in the manner provided by law, the said .... or assigns, will be entitled to a deed therefor on and after the .... day of ...., A. D. 18 .., on surrender of this certificate.

In witness whereof, I have hereunto set my hand this .... day of ...., A. D. 18 ..

....
Treasurer.

§ 68. FEE FOR DEED.] The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale and the fee of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person, may be included in one deed or certificate, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale book opposite the description of the land conveyed.

PRIVATE SALE.

§ 69. PRIVATE SALE PROVIDED.] After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk, as provided in sections sixty-five and sixty-six, of this chapter, if any real estate remain unsold for want of bidders thereof, the county treasurer is authorized and required to sell the same at private sale, at his office, to any person who will pay the amount of the taxes, penalty and costs thereon for the same. And to deliver to said purchasers a certificate, as provided in section sixty-seven, of this chapter; and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser and the other to the county clerk, as hereinbefore provided, with the additional statement inserted in the certificate, that such lands have been offered at public sale for taxes, but not sold for want of bidders, on which he is required to write, "sold for taxes at private sale;" and the treasurer is further authorized and required to sell as aforesaid all real estate in his county on which taxes remain unpaid and delinquent for any previous year or years.

REDEMPTION.

§ 70. MAY REDEEM—HOW—PROVIDED.] The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the day of such sale, or at any time before the execution of a deed of conveyance therefor by the county treasurer, by paying the county treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in this certificate, and interest thereon at the rate of thirty (30) per cent. per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the redemption in the list of sales, and give a receipt therefor to the person redeeming the same, and file a duplicate of the same with the county clerk as in other cases, and hold the money paid to the order of the purchaser, his agent or attorney; *Provided*, That infants, idiots and insane persons may redeem any lands belonging to them, sold for taxes, within one year after the expiration of such disability.

§ 76. UNDIVIDED LAND SOLD.] Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal and subsequent taxes as he shall claim of the land sold.

§ 72. PARTIAL REDEMPTION.] In every case of partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

EXECUTION OF DEED AND EFFECT THEREOF.

§ 73. TAX DEED AFTER TWO YEARS—EFFECT THEREOF.] If no person shall redeem such lands within two years, at any time after the expiration thereof, and on production of the certificate of purchase, the treasurer of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the territory, a deed of the land remaining unredeemed, which shall vest in the grantee an absolute estate in fee simple, in such land, subject, however, to all the claims which the territory may have thereon for taxes or other liens or incumbrances.

§ 74. EXECUTION AND FORM OF DEED.] Such deed shall be executed by the county treasurer under his hand, and the execution thereof shall be attested by the county clerk with the county seal, and such deed shall be conclusive evidence of the truth of all the facts therein recited, and prima facie evidence of the regularity of all the proceedings from the valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form, to-wit:

Whereas, A. B. did, on the........day of.......A. D. 18...., produce to the undersigned, C. D., treasurer of the county of............. in the territory of Dakota, a certificate of purchase in writing, bearing date the........day of............18....signed by E. F., who at the last mentioned date was treasurer of said county, from which it appears that............ did on the..........day of............18....purchase at public auction at the door of the court house in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to......for the sum of....... being the amount due on the following tract or lot of land returned delinquent for the non-payment of taxes, costs and charges for the year 18...., to-wit: [here insert the land offered for sale.] And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 18.....and that said lands had been legally advertised for sale for taxes, and were sold on the.......day of.......18....

Now, therefore, this indenture, made this....day of.......18..between the territory of Dakota, by C. D., the treasurer of said county, of the first part, and the said A. B. of the second part, witnesseth, that the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part....heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to-wit: [describe the land,] to have and to hold said mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part....heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., treasurer of said county of... .... has hereunto set his hand and seal on the day and year aforesaid.

Attest: ——————— [SEAL]

which deed shall be acknowledged by said treasurer before some one authorized by law to take acknowledgments of deeds.

§ 75. LIMITATION OF ACTION TO RECOVER LAND.] No action shall be commenced by the former owner or owners of lands, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for non-payment of taxes, or to avoid such deed, unless such action shall be commenced within three years after the recording of such deed; and not until all taxes, interest and penalties, costs and expenses shall be paid or tendered by the parties commencing such action.

§ 76. TAX SALE NOT VOIDABLE.] The sale of lands, town or city lots, or city lots, or any other real property, for taxes shall not be invalid on account of such real property having been listed or charged on the duplicate in any other name than that of the rightful owner; nor shall any such sale be invalid, nor the conveyance for the real property so sold be voidable by reason of the neglect or failure of the treasurer, or any other officer, to collect the tax for which it was sold, by distraint and sale of personal property.

§ 77. CERTIFICATE DELIVERED FOR DEED.] When deeds are delivered for real property sold for taxes, the certificate therefor must be cancelled and filed away by the county clerk; and in case of the loss of any certificate, on being satisfied thereof by due proof, and bond being given to the territory of Dakota, in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk.

SALES WRONGFULLY MADE.

§ 78. ERRONEOUS SALES CORRECTED.] When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to save the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties shall be liable for the amount to the county on his bond, or the purchaser may recover the same directly from the treasurer.

§ 79. JUDGMENT REQUIRED FOR TAXES DUE.] Whenever any action or proceeding shall be commenced and maintained before any court or judge to prevent or restrain the collection of any tax or part thereof, or any particular act of an officer in the collection thereof, or to recover any such tax before paid, or to recover the possession or title of any property, real or personal, sold for taxes, or to invalidate or cancel any deed or grant thereof for taxes, or to restrain, prevent recover or delay any payment of taxes, the true and just amount of taxes due upon such property or by such person must be ascertained and judgment must be rendered and given therefor against the taxpayer, and if the tax be delinquent execution must issue forthwith for the same.

TAX FOR TERRITORIAL PURPOSES.

§ 80. TAX FOR TERRITORIAL PURPOSES.] A tax of thirty dollars for territorial purposes shall be levied upon each peddler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise not manufactured within the limits of this territory, for a license to peddle throughout the territory for one year.

§ 81. LICENSES—HOW OBTAINED.] Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof and taking his receipt therefor.

§ 82. PEDDLING WITHOUT LICENSE.] Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable whether he be the owner or not, and upon conviction thereof shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had, to be recovered by civil action in the name of the county prosecuting for the same. All fines and penalties recovered under this section shall be applied to the common school fund of the county prosecuting for the same, and if any peddler refuses to exhibit his license to any person requiring a view of the same he shall be presumed to have none, and if he produce a license upon trial such peddler shall pay all costs of prosecution.

PAYMENT OF TERRITORIAL FUNDS BY COUNTY TREASURER.

§ 83. TERRITORIAL FUNDS—WHEN AND HOW DELIVERED.] The treasurers of the several counties shall pay into the territorial treasury all funds in their hands belonging thereto, on or before the first Monday of November in each year, and at such other times as the territorial treasurer shall require, and the funds so paid in shall be the identical territorial warrants, if any, received by the treasurer for the payment of the taxes, or in coin, or in treasury notes of the United States, and the county treasurer shall be entitled to receive ten cents a mile for travel each way by the nearest routes in making his returns to the territorial treasurer, which he may receive either by credit on his account, or on an order of the auditor upon the territorial treasury: *Provided, however*, That when the distance from the county to the territorial treasury is over fifty miles then the county treasurer is required to send the territorial tax by United States draft or a post office order, or by express, for which he shall be allowed the actual expenses for procuring the same, and no more.

§ 84. PENALTY FOR FAILURE.] If the county treasurer shall willfully and negligently fail to settle with the territorial treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the territory the sum of five hundred dollars, which sum may be recovered of him, or his sureties, on suit brought by the territorial treasurer in any court in this territory having jurisdiction; or in case of failure of the territorial treasurer to bring such suit, then any citizen of the territory may bring the same.

LIST OF LANDS BECOMING TAXABLE.

§ 85. LANDS BECOMING TAXABLE.] A list of lands becoming taxable for the first time in each county of the territory, shall be procured by the territorial auditor from the proper land officers, at the best prices for the territory, and a list of the lands becoming so taxable in each of the several counties, shall be forwarded by the auditor to the county clerk of each county on or before the [illegible] ~~fifteenth~~ day of January ~~February~~ of each year.

WARRANT BOOK.

§ 86. WARRANT BOOKS FOR COUNTY—FORM.] Each county treasurer is required to keep a book called the "warrant book," in which he shall enter every territorial, county, road or other warrant or order by him paid, or received in payment of taxes, specifying the date at which the same was received and canceled, from whom received, the payee, or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed, and total amount for which it was received, and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash, and in another and separate place he shall enter an account of all indorsements made on warrants or orders in part payment thereof. Such warrant book shall be in the following form, to-wit:

TREASURER'S WARRANT BOOK, ... COUNTY, DAKOTA.

Date.	From what Received.	Payee of Warrant.	Number of Warrant.	Date of Warrant.	Amount.	Indorsements.	Principal.	Interest.	Total

MISCELLANEOUS PROVISIONS.

§ 87. PENALTY FOR SUBSTITUTING WARRANTS.] If any county treasurer or his deputy, or any other person, shall knowingly or willfully make, issue and deliver, any tax receipt, or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in warrants or orders when the same was or were paid in cash, such treasurer, or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction in this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one, nor more than five years, in the discretion of the court.

§ 88. FRAUDULENT RECEIPTS—PENALTY.] If any county treasurer in this territory, or his deputy, or any person, shall knowingly or willfully make, issue and deliver, any tax receipt, or duplicate tax receipt, required by section forty-three of this act, to be issued, by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate, different from each other, with intent to defraud the territory of Dakota, or any county in said territory, or any person or persons whomsoever, such treasurer or deputy treasurer or other person, shall be deemed guilty of a high crime and misdemeanor for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction of this territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year, nor more than five years, in the discretion of the court.

§ 89. DERELICTION OF OFFICER.] In the case of dereliction of duty on the part of any officer or person required by law to perform any duty under the provisions of this act in any county in this territory, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in any such county, on receiving satisfactory evidence of such dereliction or failure to perform as required by law any duty enjoined by this act, shall refuse to pay such person or persons any sum whatever for such services.

§ 90. MISCELLANEOUS RECEIPTS.] When any money shall be paid to the county treasurer, he shall make the proper duplicate receipts for the same, as in the case of the payment of taxes, and shall give one of said receipts to the person paying said money, and the other to the county clerk within one month thereafter.

§ 91. INTEREST ON WARRANTS RECEIVED.] When the county treasurer shall receive any county or territorial warrants, or orders, on which any interest is due, he shall note on such warrants or orders the amount of interest by him paid thereon, and shall enter in his account the amount of such interest, distinct from the principal.

§ 92. REDEEMED WARRANTS.] When the county treasurer of any county shall pay any county order drawn on him by the county commissioners, or when he shall take or receive any such order in payment for any tax, he shall write on the face of such order "Redeemed," and the date of redemption, and shall sign his name thereto.

§ 93. WHEN WARRANT EXCEEDS TAX.] When any person desiring to pay any taxes due and unpaid, shall present a county order to the treasurer of any county in payment for such tax, which shall exceed the amount that such treasurer is authorized to receive in county orders in payment for such tax, he shall indorse on the back of such order in part payment, the amount he is authorized by law to receive, and date the same. Said treasurer shall take two receipts from the holder of such order, for the amount so indorsed and paid, showing the date of the indorsement, a full description of such county order, including the date thereof, to whom given, the amount for which it was given, and all the indorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher.

§ 94. PART PAYMENTS APPLIED.] When any person shall desire to pay only a portion of the tax charged on any real estate, such person shall pay a like proportion of the several taxes charged thereon, and no person shall be permitted to pay one of said taxes without paying the others, except the tax for the erection, completion or repair of school houses, the collection of which shall have been enjoined by law.

§ 95. DELINQUENT TREASURER.] If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county clerk, on receiving instructions for that purpose from the territorial auditor or from the county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties or any of them, in the district court of his county.

§ 96. BOARD MAY REMOVE.] Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the board of county commissioners of such county may, at their discretion, remove such treasurer from office, and appoint some suitable person to fill the vacancy thereby created, as hereinbefore provided.

§ 97. ADDITIONAL SURETY.] The county commissioners of any one of the counties of this territory, may require the county treasurer to give additional freehold sureties, whenever in the opinion of a majority of said commissioners, the existing security shall have become insufficient; and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them may direct, whenever, in their opinion, more money shall have passed, or is about to pass into the hands of said treasurer, than is or would be recovered by the penalty in the previous bond.

§ 98. IF TREASURER FAIL.] If any county treasurer shall fail or refuse to give such additional security or bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed, agreeably to the provisions of law.

§ 99. TREASURER NOT DISCOUNT WARRANTS.] No county treasurer shall either directly or indirectly, contract for or purchase any order or orders, issued by the county of which he is the treasurer, at any discount whatever upon the sum due on such order or orders; and if any county treasurer shall so contract for or purchase any such order or orders, he shall not be allowed, in settlement, the amount of said order or orders or any part thereof, and shall also forfeit the whole amount due on such order or orders, to be recovered by civil action, at the suit of the territory of Dakota, for the use of the county.

§ 100. CERTAIN CREDITS FORBIDDEN.] The county treasurer, on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon.

§ 101. SHALL NOT LOAN OR USE FUNDS.] If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own individual purpose, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars, nor less than one hundred dollars, to be recovered in action at law at the suit of the territory of Dakota, for the use of the county..

§ 102. PAYMENTS AFTER SETTLEMENT.] Each county treasurer shall, immediately after the annual settlement with the county commissioners of his county, on demand and presentation of the order of the clerk, issued by direction of the county commissioners therefor, pay over to the district or precinct treasurer, city treasurer, or other proper officer, all moneys in the county treasury belonging to any district, precinct, city, town or school district; *Provided*, That the moneys mentioned in this section may, by the direction of the proper local officers, remain in the county treasury, on the order of the county clerk as aforesaid.

§ 103. DETAILED EXHIBIT, WHAT TO CONTAIN.] The county clerk and county treasurer, conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, and also the assets and liabilities at the time of making out the same; said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account, and also the liabilities of the county stated in detail, and the assets of every kind as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in, and the kind of funds; said exhibit shall be made out annually, and posted up in the office of the treasurer, on the first Monday in October.

§ 104. LOAN AND EMBEZZLEMENT PUNISHED.] If any county treasurer, other officer or person, charged with the collection, receipt, safe keeping, transfer or disbursements of the public money, or any part thereof, belonging to the territory or any county, precinct, district, city, town or school district in this territory, shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever; or shall use by way of investment in any kind of security, stocks, loan, property, land or merchandise, or in any other manner or form whatever; or shall loan, with or without interest, to any company, or corporation, association, or individual; or if any person shall advise, aid, or in any manner knowingly participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said money or other property as aforesaid, as shall be thus converted, used, invested, loaned, or paid out as aforesaid, which is hereby declared to be a high crime and misdemeanor, and upon presentation, trial by indictment and conviction thereof, before any court of competent jurisdiction in this territory, such county treasurer or other officer or person shall be sentenced to imprisonment in the penitentiary, and kept at hard labor, for a term of not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled, as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money, or other funds, property, bonds or securities, assets or affects, of any kind as aforesaid, have been so embezzled; and in all cases, such fine so operating as a judgment, shall only be released or entered as satisfied by the party or parties in interest, as aforesaid.

§ 105. EXTRAORDINARY EXPENDITURE REQUIRES VOTE.] If the county commissioners deem any expenditure necessary, greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case, four weeks' notice of said election shall be given in each newspaper published in the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended, and if a majority of the votes cast authorize the tax, the county commissioners shall cause the same to be levied and collected in the same manner as the annual tax, and if possible at the same time; *Provided, however*, That no new assessment shall be made for any especial tax.

CHAPTER 29.

HIGHWAYS, BRIDGES, FERRIES AND ROAD SUPERVISORS.

TERRITORIAL ROADS.

§ 1. SECTION LINES HIGHWAYS.] All section lines shall be, and are hereby declared, public highways, as far as practicable ; *Provided*, That nothing in this act shall be so construed as to interfere with existing highways in the settled portions of the territory.

§ 2. VACATION AND CHANGE.] The board of county commissioners of each county shall have power to vacate or change the highways within their respective counties, located by the legislative assembly, as hereinafter provided.

§ 3. SIXTY-SIX FEET WIDE.] The public highways along section lines, as declared by the first section of this chapter, shall be sixty-six feet wide, and shall be taken equally from each side of said lines, unless changed as provided in the preceding section.

LOCATION, VACATION AND CHANGE OF HIGHWAYS RUNNING THROUGH MORE THAN ONE COUNTY.

§ 4. PETITION AND PROCEEDINGS.] When fifteen freeholders of any county shall petition the board of commissioners of such county for the location, change or vacation of any highway running into more than one county, six of which freeholders shall reside in the immediate neighborhood of such highway, setting forth in such petition the beginning, course and termination of the highway proposed to be located or vacated, or of the change desired to be made, together with the names of the owners and occupants or agents of the lands through which the same may pass, the county clerk of such county shall notify the county clerk of each of the counties in which such highway is to be run, located, vacated or changed, of the filing of such petition, accompanying such notice with a copy of such petition, which shall be by such county clerks laid before the several boards of county commissioners at their next session thereafter, when such board shall appoint commissioners according to the regulations hereinafter provided.

§ 5. NOTICE AND EXAMINATION.] Upon the board of commissioners of the county in which such petition is first filed being satisfied that notice thereof has been given at least twenty days before the session of such board at which such petition is to be heard, by publication in a newspaper of each county in which such highway is to be run, vacated or changed, for three weeks successively, or by written or printed notices posted up in three of the most public places in the neighborhood of such highway, in each of such counties, such board shall appoint a commissioner to examine such highway.

§ 6. CLERK TO NOTIFY EXAMINERS.] Immediately upon the appointment of such commissioner, the county clerk of such county must notify the county clerk of each of the counties interested, specifying, in such notice, the time and place when such commissioners shall meet to commence the examination of such highway. When such last mentioned county clerk, and the county clerk of the county where such petition is first filed, shall issue precepts to the sheriffs of their respective counties, directing them to notify such commissioners of such appointments, and the time and place of their meeting.

§ 7. NUMBER AND DISAGREEMENT.] Each board shall appoint one commissioner, and in case the number is equal and cannot agree, the commissioner thus appointed shall appoint another, who shall perform the same duties and receive the same fees as those first appointed.

§ 8. OATH AND DUTY OF EXAMINERS.] At the time and place designated in the notice given by the county clerk of the county in which such petition is first filed, such commissioners shall meet, and having first taken an oath, to be administered by some authorized officer, to faithfully perform their duties, shall proceed to examine the highway proposed to be located, vacated or changed, and in such examination may employ a surveyor, and a necessary number of chain carriers and markers.

§ 9. REPORT OF SAME.] After such commissioners shall have completed their examination, they shall draw up a report of their proceedings, setting forth the highway proposed to be located, vacated, or changed by course and distance, and recommending therein, according to the opinion of the majority of such commissioners, either that the prayer of such petition shall be granted or rejected, a copy of which report shall be returned to the board of commissioners of each of the counties interested at their next session thereafter.

§ 10. DECISION UPON PETITION.] Upon the return of such report the board of commissioners shall proceed to determine the prayer of such petition, and if there shall be no remonstrance against the same, and it is recommended in such report, such board may, if they deem it expedient, declare it granted, and, if so declared, shall direct the county clerk to notify the county clerks of each of the other counties interested thereof. Then, if there be no remonstrance pending in either county interested, the county clerk of each of such counties shall notify the supervisors of the road districts in his county through which such highway passes, or the change is made, when such supervisors shall open so much of such highway as lies in their respective districts, and such road supervisors must in like manner be notified of the vacation of any highway, or of any part thereof.

§ 11. DISMISSAL OF PETITION.] If such commissioners do not recommend the prayer of such petition to be granted the boards of commissioners of the counties interested shall order it to be dismissed, but such order of dismissal shall not be a bar for other petitions thereafter concerning the same subject matter.

§ 12. REMONSTRANCE HEARD.] If at the session of the board of commissioners at which the report of the commissioners appointed to examine such highway, is presented, any person shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged in a sum mentioned, by the location, vacation or change of such highway, to the truth of which he shall take and subscribe an oath, such board shall appoint three persons, residents of such county, to review that part of such highway, whereof such complaint is made, and shall direct the county clerk of such county to notify the county clerk of each of the other counties interested in such remonstrance, when further proceedings touching such petition shall be continued until the ensuing term of such board.

§ 13. VIEWERS ASSESS DAMAGES.] Such reviewers, at the time and place designated by the board of commissioners to whom such remonstrance is presented, shall meet, and having taken an oath before some officer authorized to administer oaths, to faithfully perform their duties as such reviewers, shall proceed to examine that part of such highway, or the change thereof complained of, and having done so, shall at the next term of such board, report their proceedings to such board, in which report they shall specify the amount of damages sustained by the person remonstrating, if any; whereupon such board shall determine whether the damages assessed are greater than the utility of the proposed highway or change, and if they shall be of opinion that the prayer of the petition should not be granted, they shall direct the county clerk of such county to notify the county clerk of each of the other counties interested thereof, and continue further proceedings in the premises until the next term thereafter; but if they shall be of the opinion that the damages should be paid and the prayer of the petition be granted they shall direct such county clerk to notify the county clerk of each of the other counties interested of the amount of such damages, and shall continue further proceedings to the next term thereafter.

§ 14. PETITION WHEN REJECTED.] If more freeholders residing along the highway proposed to be located, vacated, or changed, remonstrate against granting the prayer of such petition than those of the same county petition therefor, the board of commissioners of such county shall decide against such petition, and shall direct the county clerk of such county to notify the county clerk of each of the other counties interested therein of such fact and decision, and continue further proceedings in the premises until the ensuing term.

§ 15. FINAL DETERMINATION.] At the next term after the reception of notice of any remonstrance, and the proceedings thereon, the county clerks of such counties shall lay the same before their respective boards of commissioners, who shall determine whether the prayer of the petition ought to be granted, and shall cause the county clerk of each county interested therein to be notified, and if the boards of commissioners of a majority of such counties decide in favor of such petition, at the term of such boards when the same is ascertained, such highway shall be declared located, vacated or changed, and such supervisors notified thereof as hereinbefore provided, but if a majority of such boards decide against such petition, it shall be declared dismissed whenever it is ascertained, and all damages declared assessed shall be paid equally by the counties interested; and if such reviewers shall fail to assess any damages, the person asking the same shall pay the costs of such review.

§ 16. FEES FOR SERVICES.] Such commissioners appointed to examine such highway, and such reviewers, shall receive each two dollars for every day they may be necessarily employed, and such surveyor, chain carriers and markers shall receive such compensation as the board of county commissioners, where such petition is first filed, shall deem reasonable, to be paid equally by each county interested.

§ 17. ROAD RECORDED IN EACH COUNTY.] Whenever a highway is located, vacated or changed, the order therefor shall be entered of record in the order book of the board of commissioners of each county interested, in which county such highway or change thereof shall be particularly described by course and distance.

OF THE LOCATION, VACATION, AND CHANGE OF HIGHWAYS NOT ON SECTION OR QUARTER SECTION LINES.

§ 18. PETITION AND NOTICE.] Whenever twelve freeholders of the county, six of whom shall reside in the immediate neighborhood, shall petition the board of county commissioners for the location, vacation, or change of any public highway other than on section or quarter section lines; such board, if they shall be satisfied that notice of such application has been given by publication three weeks successively in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such highway, or change, at least twenty days before the meeting of the board, at which such petition is to be presented, shall appoint three persons to view such highway.

§ 19. SHERIFF NOTIFIES VIEWERS.] The county clerk of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths, to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground, not running through any person's enclosure or other improvement of one year's standing, without the owner's consent, unless upon examination, a good way cannot otherwise be had.

§ 20. REPORT AND RECORD.] Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change or vacation may be made, giving a full description of such location, change or vacation, by metes and bounds and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly, shall be required; and in such case, a copy of the order vacating such highway shall be recorded by the proper county clerk of the county, and shall cause the supervisors of the road district to be notified accordingly.

§ 21. OPENING OF ROAD.] If no objections be made to such proposed highway, vacation or change, such board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of any of the townships in which such location or change is made; and shall cause notice thereof to be given to the proper supervisor, to work such location or change.

§ 22. APPOINTMENT OF REVIEWERS.] If any person through whose land such highway or change may pass shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders as reviewers and assign a day and place for them to meet.

§ 23. REVIEWERS TAKE OATH—REPORTS.] Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then or on any other day to which a majority, may adjourn, prior to the next session of said board, proceed to review the proposed highway and assess the damages, if any, which such objector may sustain from such highway or change being opened, vacated or continued through his lands, and shall report the same to the ensuing session of such board.

§ 24. ACTION ON REPORT OF MAJORITY.] If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation or change to be of sufficient importance to the public they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claim for damages, the objector shall pay the costs, and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, as hereinbefore provided.

§ 25. SETTING ASIDE ASSESSMENT.] If it shall be made to appear to the board that the damages assessed are unreasonable they may set aside such assessment and order another review, under the same regulations as provided in case of the first review.

§ 25. REVIEWERS APPOINTED.] If any one or more freeholders residing in such county, along such proposed highway, vacation or change, shall object to the same at any time before final action thereon, as not being of public utility, other viewers may be appointed, who shall proceed, on a

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day to be by them designated, after having taken an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board at their next session, whether or not, in their opinion, the said highway, vacation or change, will be of public utility.

§ 27. REPORT OF REVIEWERS.] If a majority of the viewers last named report against the public utility of such highway, the same shall not be established unless the petitioners will open and maintain the same at their own expense; but if they report favorably thereto the objector shall pay the costs of the review, and the highway shall be recorded and ordered to be opened and kept in repair, but in no case shall a highway be opened, vacated, or a change be made, if a majority of the freeholders residing along such proposed highway, or along such change, or along the highway proposed to be vacated, shall remonstrate against the same.

§ 28. PAYMENT OF DAMAGES.] No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the county clerk of such county.

§ 29. APPEAL TO DISTRICT COURT.] Any person aggrieved by any decision of any board of commissioners may appeal therefrom to the district court of such county, upon his filing a bond, with a surety and penalty, to be approved by the register of deeds of such county, conditioned for the due prosecution of such appeal, and the payment of costs, if costs be adjudged against him, and in case proceedings shall be had in more than one county, the county clerk of each county, on being notified of such appeal by the county clerk of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such county, and upon the determination of such appeal such clerk shall notify the county-clerk of each of the counties interested thereof.

OF THE SAME UPON SECTION AND QUARTER SECTION LINES.

§ 30. ACTION WITHOUT SURVEY OR VIEW.] The board of county commissioners has power to establish, change, and vacate highways upon section and quarter section lines, when the initial and terminal points, and the course of the highway, can be clearly described without the appointment of viewers or the services of a surveyor; but in all other respects the proceedings therein shall be governed by the provisions of the preceding subdivision of this chapter, relating to the establishment, vacation and change of highways not on such lines.

MISCELLANEOUS PROVISIONS.

§ 31. ROADS SIXTY-SIX FEET WIDE.] No road shall be less than sixty-six feet wide; and the order for laying any highway must specify the width thereof.

§ 32. ON COUNTY OR TOWN LINES.] Public highways established on the county or township line, shall be opened and repaired by the supervisor of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township.

§ 33. HIGHWAY RUNNING THROUGH ENCLOSURE.] Whenever any public highway shall have been laid out through any enclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty days' notice in writing, to remove his fence; but such owner or occupant shall not be compelled to move such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done.

§ 34. CREDIT WHEN NO DAMAGES.] If the owner or occupant shall not have been allowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing such fence credit on his highway tax for any amount that the supervisor shall deem just, subject to the approval of the county commissioners.

§ 35. SIX YEARS NON-USE VACATES.] Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town; *Provided, however*, That the board of county commissioners shall decide that public necessity does not require such road kept open, which decision shall be recorded by the clerk of the court, whereupon said vacated highway shall vest in the rightful owner, who may have the title thereof, according to law, of the property on each side of said highway.

§ 36. SETTLERS FREEHOLDERS.] In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this territory shall have and possess all rights in this act granted to freeholders.

§ 37. TWENTY YEARS USE.] All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.

§ 38. VIEWERS DISINTERESTED.] No person owning lands, or who is related by consanguinity to any person owning lands along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

§ 39. PAY OF VIEWERS.] Viewers and reviewers appointed under this act shall receive two dollars for every day they shall be necessarily employed as such.

§ 40. BENEFITS CONSIDERED.] The benefits to accrue to any owner, occupant or claimant of lands by reason of opening any highway, are to be considered by the commissioners, or the viewers, in the determination and award of damages for the same.

§ 41. PRIVATE ROADS.] Any person may have a private road laid out, changed, or vacated, upon presenting a petition to the board of commissioners of the county in which such petitioner resides, under regulations hereinbefore provided, for roads running through one county only; *Provided*, That such board may order such private road to be laid out, changed or vacated, without any view, if there be no remonstrance against such petition; and the petitioner shall open and keep in repair such road at his own expense.

§ 42. PUBLIC LANDS—DAMAGES.] When any person shall acquire the title to government lands over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title shall, within three months after receipt of his patent therefor, assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such road shall remain and be a public highway, but his damages, if any, shall be paid, and in case of a failure for that length of time to assert his claim for damages, as aforesaid, he shall thereafter be debarred from asserting such claim.

§ 43. OCCUPYING CLAIMANTS.] All public land in this territory, settled upon and occupied by settlers thereon, shall be subject to all the provisions of this act so far as the rights and liabilities of such settlers are concerned.

§ 44. LINE ROADS—ONE HALF OF EACH.] When a public highway is laid out and located upon the line dividing the land of two individuals, one half of the same must be taken, if practicable, from the land of each.

§ 45. BOND FOR COSTS.] In all cases the person or persons remonstrating against the establishment, change or vacation of a public highway, or who may petition for damages occasioned thereby, must give to the board of county commissioners a bond with approved security for the payment of all costs occasioned by such remonstrance or petition for damages in case the highway be established, or no damages be allowed.

§ 46. TIMBER ALONG HIGHWAY.] On all public highways of not less than sixty-six feet in width, the owners, occupants or claimants of adjoining lands may use and occupy one rod in width of such highway adjoining such lands for the purpose of cultivating the growth of timber and trees thereon: *Provided*, That the same be kept continuously in good order and under full timber and tree cultivation.

§ 47. HEDGE PROTECTION.] Any person cultivating a hedge upon his land adjoining a public highway and desiring to fence the same may place such fence seven feet over and upon such highway: *Provided*, That it do not obstruct the public travel.

OF BRIDGES.

§ 48. BRIDGES PART OF HIGHWAY.] Bridges erected or maintained by the public constitute a part of the public highway.

DUTIES OF PERSONS USING PUBLIC HIGHWAY.

§ 49. VEHICLES TURN TO RIGHT.] Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, sleds, sleighs, or other vehicle, each shall pass to the right of the middle of the traveled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference.

§ 50. PENALTY—DAMAGES.] Every person offending against the provisions of the preceding section shall, for each offense, forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offense.

§ 51. DRUNKEN DRIVERS.] No person owning or having the direction or control of any coach or other vehicle, running or traveling upon any road in this territory, for the conveyance of passengers, shall employ or continue in employment any person to drive such coach or other vehicle, who is addicted to drunkenness, or to the excessive use of intoxicating liquors, and if any such person shall violate the provisions of this section, he shall forfeit a sum not less than ten and not exceeding fifty dollars, and shall be liable for all damages sustained.

§ 52. HITCHING PASSENGER TEAMS.] It shall not be lawful for the driver of any carriage or other vehicle used for the conveyance of passengers, to leave the horses attached thereto while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope, or chain, or without some suitable person to take the charge or guidance of them, so as to prevent their running; and if any such driver shall violate the provisions of this section, he and his employer or employers, jointly and severally, shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense.

§ 53. PASSENGER CONVEYANCE LIABLE.] The owners of every carriage or other vehicle, running or traveling upon any road or public highway, for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured, in all cases, for all damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be willful, negligent, or otherwise, in the same manner as such driver would be liable.

OF FERRIES.

§ 54. UNLAWFUL WITHOUT LEASE, OR IN TWO MILES OF OTHER.] It shall be unlawful for any person to establish, maintain, or run, upon any waters within this territory, any ferry upon which to convey, carry, or transport any persons or property, for hire or reward, without first having obtained a license therefor as hereinafter provided; and where but one bank or shore is in this territory, the board of commissioners for the proper county have the same authority, and this law applies with like effect, as if the entire stream were within this territory, so far as the banks and waters actually within it are concerned. And when any ferry lease has been granted, no other lease shall be granted within a distance of two miles thereof across the same stream. Any person violating any of the provisions of this section, shall, for each offense, forfeit and pay to the proper county not less than five dollars, nor more than one hundred dollars, with costs, to be recovered in an action in the name of the territory.

§ 55. COUNTY BOARD LEASES—TERMS.] The board of county commissioners of the county to whom application shall be made for a ferry, in the manner hereinafter provided, are hereby authorized, and it shall be their duty to grant a lease of such ferry, for a term not exceeding fifteen years, to such person or persons who shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the said board of county commissioners as lessors, and such highest bidder or bidders as lessees, and the county commissioners of any county in this territory that have leased to any person or persons the ferry across any stream or streams in this territory, shall be empowered to extend to such person or persons the lease so granted to any person or persons putting in a steam ferry at the same rate as previously paid: *Provided*, That such extended time shall not exceed fifteen years from the time of the granting of the first lease, and that when in the opinion of the county commissioners of the county wherein such lease is granted, the rates fixed by law for crossing such ferry be too high they shall have the right to fix the rates as in their judgment may seem just.

§ 56. RATES ON MISSOURI, SIOUX, DAKOTA AND VERMILLION.] The rates for crossing the Missouri river on ferries, shall not exceed the following. to-wit:

For two horses, mules or oxen and wagon, with or without load, one dollar.
For each additional pair of horses, mules or oxen, thirty cents.
For each two horses or mules and buggy, seventy-five cents.
For each one horse or mule with buggy and driver, fifty cents.
For each lead horse or mule, twenty-five cents.
For loose cattle per head, fifteen cents.
For sheep and swine per head, ten cents.
For each one hundred pounds of freight or merchandise unloaded, ten cents.
For each thousand feet of lumber unloaded, one dollar.

The rates for ferriage across the Big Sioux river, the Vermillion river, and the Dakota river, shall not exceed the following, to-wit:
For foot passengers, each, ten cents.
For each horse or mule, with or without a rider, ten cents.
For each head of loose cattle, five cents.
For two horses or mules, or cattle team, loaded or without load, with driver, twenty-five cents.
For each horse or mule, or ox over two, attached to a team, five cents.
For a single horse or mule to a buggy, fifteen cents.
For each head of sheep or swine, five cents.
All freight not attached to teams, five cents per one hundred pounds.
All lumber in pile, fifty cents per thousand feet.

Said ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near said ferry, in easy view of the passing public.

§ 57. FERRIES IN UNORGANIZED COUNTIES.] The secretary of the territory is hereby authorized, when application is made to him, to grant a lease of any ferry in any unorganized county or counties, or in any other unorganized country, within and under the jurisdiction of the territory, for the like period and under the provisions of this chapter in every respect which are applicable thereto. The money received therefor shall be by him paid into the territorial treasury: *Provided*, That all licenses granted by the secretary under this section shall terminate upon the organization of the county in which the same or any part thereof lies, and it shall thereafter be subject to the general law as herein provided.

§ 58. SAFETY OF FERRIES.] Every person obtaining a lease to keep a ferry as aforesaid, shall provide and keep in good repair a good and sufficient boat for the safe conveyance of persons or property, and when the river or creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, from sun rise till sun set, and with reasonable care and promptness, convey across said ferry all persons and property presented for transportation across the same. And if any lessee, as aforesaid, shall fail or neglect to perform all or any of the duties enjoined upon him by this act, or shall demand or receive a higher rate of ferriage than shall be allowed by the preceding section of this act, the lessee so offending, shall for each offense forfeit and pay the sum of ten dollars, to be recovered in the name of the territory of Dakota before any justice of the peace of the proper county.

§ 59. PENALTY FOR UNLAWFUL FERRY] If any person shall keep a ferry in any of the organized counties of this territory, without a lease first obtained from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty dollars, and not exceeding five hundred dollars, for each year or fractional part of a year such person shall keep such ferry, to be recovered in a civil action in the name of the territory of Dakota.

§ 60. MONEY TO SCHOOL FUND] All moneys which may be received by the board of county commissioners upon leases granted for ferries as aforesaid, and all forfeitures collected for violations of the provisions of this chapter, shall, within thirty days after the receipt thereof, be paid to the county treasurer, for the use of the public schools of the county, and the same shall be apportioned among the several districts of the county in like manner as other school funds are now by law apportioned.

§ 61. TEMPORARY FERRIES] Nothing in this chapter shall prevent any person from ferrying persons and property across any small stream in time of high water, when, in the opinion of the board, such stream is too small to justify a regular ferry.

§ 62. FORFEITURE FOR NOT MAINTAINING.] Any and all persons who have heretofore received either permit, lease, grant or charter in any form, either from the legislative assembly, or any tribunal or board, for the keeping of a ferry or ferries, of any kind, who shall neglect or fail, during the period of one month, at any one time after the passage of this or any prior act, to keep his or their respective ferry or ferries in operation, for the safe transportation of persons and property over the same according to law, shall forfeit all the ferry rights, franchises and privileges, and all right, title or claim to the same, granted by or under this law, or any former act as aforesaid; and upon due proof, made before the board of county commissioners of the proper county, of such failure or neglect, as aforesaid, the said board are empowered and authorized to declare such forfeiture absolute, and thereupon and thereafter all the rights, franchises and privileges granted by or under this law, or any previous law, as aforesaid, shall cease and be of no force or effect in law or equity.

OF ROAD SUPERVISORS.

§ 63. ROAD DISTRICTS—SUPERVISORS.] At the annual meeting of the county commissioners in January of each year, or as soon thereafter as practicable, it shall be the duty of the board of county commissioners of each of the organized counties of this territory to apportion their respective counties into one or more road districts, where such county is not at present formed into townships, and shall appoint for each district a road supervisor, who shall hold his office until the first of January succeeding his appointment, and shall take an oath to faithfully discharge his duties as such road supervisor.

§ 64. VACANCIES.] The board of county commissioners of each county shall have power to fill all vacancies, and shall fill all vacancies that may occur for any reason in the office of road supervisor.

§ 65. SUPERVISOR'S DUTIES.] The road supervisor of each road district, or township, shall obtain the names and make out a list of all male persons between the ages of twenty-one and fifty years, residing within each road district, which list shall be completed on or before the first day of March in each year, and in case any person as aforesaid shall locate in any road district after the first day of March, the supervisor shall enroll his name, and he shall be liable to labor on the road at the same time and in the manner that those originally enrolled are liable to labor, but any person who has labored that year in any road district and has a certificate thereof, shall be credited with the labor as performed, in the same manner as though the labor had been performed in the district in which he resides.

§ 66. ROAD POLL TAX.] Every male person between the ages of twenty-one and fifty years, shall be subject to a poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor, in each year on the public highway within his road district, at the time and place directed by the road supervisor.

§ 67. SUPERVISORS ORDER WORK DONE.] The road supervisors must order out every person subject to road labor as aforesaid, between the first days of April and December, annually, to perform the work necessary on the public highways within their respective road districts.

§ 68. ROAD TAX WORKED—WHERE.] Any road tax levied by the board of county commissioners, in addition to the poll tax, may be worked out in the road district in which such person resides, when it is a personal tax, or a tax on personal property; or in the road district where the real property is situate, on which the tax is levied, at the rate, in all cases, of one dollar and fifty cents per day.

§ 69. WORK CERTIFIED FOR TAX.] The road supervisor must obtain a list of all the road tax assessed on each individual; and a certificate by the supervisor for the amount worked out must be taken by the treasurer or collector of the county in payment to that amount of said tax.

§ 70. BOARD HOW TO EXPEND TAX.] The board of county commissioners must order the expenditure of all road tax paid into the county treasury in the improvement of the highways, paying the road supervisors, purchasing implements and repairing bridges, in each road district, under such regulations as they may deem most expedient for the public interest, and for this purpose shall order the payment of such sum by the treasurer to the parties performing such labor upon the certificate of the road supervisor: *Provided*, That such funds shall be expended in the road district in which the person resides when it is a personal tax, or a tax on personal property; and where the real estate is situate, where it is a tax on real estate.

§ 71. OBSTRUCTIONS IN HIGHWAY.] It shall be the duty of any road supervisor having personal knowledge of, or in being notified in writing of, any obstruction in the highway or public street in his district, to immediately remove or cause to be removed any such obstruction.

§ 72. PENALTY FOR OBSTRUCTING.] If any person or persons shall willfully, carelessly or negligently obstruct or injure any public highway, public street or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed, or injury done, to enter complaint in behalf of the people against the person or persons so offending, before a justice of the peace of the county; and, on conviction thereof, the fine so collected shall be immediately paid over to the treasurer of the county for the benefit of the common schools.

§ 73. SUPERVISOR'S REPORT.] On or before the first Monday of January of each year, the several road supervisors shall each make a report to the board of county commissioners of his doings as such during the preceding year, the amount of labor performed, the number of days' labor necessarily performed by himself in the discharge of his duties, and the county commissioners shall thereupon cause a warrant on the county treasury to be drawn in favor of such supervisor for such services at one dollar and a half per day, payable from the common road fund belonging to said district in the county treasury.

§ 74. REFUSAL TO SERVE—PENALTY.] Every person who shall be elected or appointed a road supervisor according to the provisions of this chapter, and shall fail, refuse, or neglect to qualify as such road supervisor for thirty days after having been duly notified of his election or appointment, by the county clerk, shall forfeit the sum of ten dollars, to be collected upon a complaint made by any citizen before a justice of the peace of the county, together with all the costs of the prosecution, which forfeitures shall go into the common road fund of the district in which he resides.

CHAPTER 30.

THE MILITIA.

§ 1. WHO COMPOSE MILITIA.] All able-bodied male citizens, residents of this territory, being eighteen years of age and under the age of forty-five years, excepting persons exempt by law, shall be enrolled in the militia, and perform military duty in such manner, not incompatible with the constitution and laws of the United States, as hereinafter prescribed.

§ 2. TERRITORY—ONE DIVISION, COMMAND.] The territory shall constitute but one division, and shall be under the command of one brigadier-general and colonels, as the commander-in-chief may see proper, according to the census returns taken from time to time under the authority of law.

§ 3. GOVERNOR, COMMANDER IN-CHIEF—OFFICERS APPOINTED.] The governor of the territory shall be commander-in-chief, and shall have power to appoint the brigadier-general, colonels, majors, and all the commissioned officers necessary for the several regiments and companies, and the captains of the several companies shall have power to appoint all non-commissioned officers of their respective companies.

§ 4. SHERIFF MAKE LIST OF PERSONS.] It shall be the duty of the sheriff of each of the counties of this territory, when taking the census of their respective counties, to make out a list containing the names of all the persons in their respective counties, liable to perform military duty, and file a copy of such list with the register of deeds of the county, to be by him kept as a matter of reference, and also to transmit to the secretary of the territory a copy, to be by him kept as a matter of reference in his office; which copies shall be filed in the offices of the persons aforementioned, on or before the first day of January in each year.

§ 5. LIST—WHEN TAKEN.] The sheriff shall take a list of the persons liable to perform military duty at the time of making the assessment.

§ 6. WHEN AND HOW MILITIA LIABLE TO DUTY—RULES.] The militia thus enrolled shall be subject to perform no active military duty, save and except in case of war, invasion, or to prevent invasion, riot, or insurrection. In such case, the commander-in-chief is hereby authorized to order out, from time to time, for actual service, as many of the militia thus enrolled as necessity may require, and to provide for their organization in the manner hereinafter prescribed for the organization of volunteer militia: *Provided*, That, in all such cases, the enrolled volunteer militia shall first be ordered into service. The militia, while in active service, shall be governed by the military law of the territory, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid in this section, the senior ranking officer of the troops present shall take command: *Provided*, That no person shall be eligible to a command in the militia of this territory except citizens of the United States, or persons having declared their intention to become such.

§ 7. VOLUNTEER MILITIA.] The active militia of this territory shall be composed of volunteer companies, raised by order of the commander-in-chief within the limits of this territory. The volunteer militia shall, in all cases of war, invasion, riot, or insurrection, be the first military force ordered into the field.

§ 8. HOW COMPOSED.] Volunteer companies shall consist of men between the ages of eighteen and forty-five: *Provided*, No minor shall be enrolled as a member of such volunteer company, without the consent of his parent or guardian.

§ 9. COMPANIES, BATTALIONS AND REGIMENTS FORMED—DRILL.] Whenever, according to the provisions of this act, forty men shall be enrolled as members of a volunteer company of artillery, infantry, light-infantry, or rifle, or whenever thirty men shall be enrolled as members of a volunteer company of cavalry, such companies shall be officered by the commander-in-chief, as provided for in the third section of this chapter. No company shall be increased to more than one hundred members; and whenever a company becomes reduced to less than twenty members, it may be attached to another company, or disbanded, by order of the commander-in-chief: *Provided*, That whenever twenty men shall be enrolled as members of a light artillery company, they may proceed as provided in section 3. When two such light artillery companies are organized in any brigade, they may be formed into a battalion, under the command of a major and such subordinate officers as the commander-in-chief shall direct; and whenever three such companies of light artillery are organized in any brigade, they may be formed into a battalion under the command of a lieutenant-colonel and major, with such subordinate officers as the commander-in-chief may direct; and, whenever five such light artillery companies exist in any one brigade, they may, by order of the commander-in-chief, be formed and organized into a regiment, with a full complement of regimental officers. All such companies, battalions and regiments of light artillery, when organized, shall be armed and drilled, as near as practicable, in accordance with the system of the United States army for like organization.

§ 10. COMPANIES NUMBERED—RANK.] The several volunteer companies of cavalry, artillery, infantry, light infantry, and riflemen in this territory shall be numbered by the proper commandant of the brigade, and a record made of such numbers in his office, and in the adjutant general's office, and when they exist in sufficient numbers, and are conveniently located for the purpose, shall be organized into battalions and regiments, and officered as provided in section three of this act. And in all cases of the same description of arms, and the oldest organized uniform company, those first commissioned shall be first and senior in rank, the next uniform company commissioned second in rank, and so on to the junior organized and commissioned company, dating from the first commissions issued to the officers of the company.

§ 11. RETURN BY COMMANDANTS—CONTENTS.] Every commandant of any volunteer independent company shall make a return of all non-commissioned officers, musicians and privates under his command, belonging to his company, and all the arms and accoutrements belonging thereto, to the commandant of his regiment, squadron or battalion; but, if his company does not form a part of any regiment, squadron or battalion, then he shall make return to the commandant of his brigade; but in either case, shall make his return on or before the first day of October in each year; and the commandants of each and every regiment, squadron or battalion shall make return to the commandant of brigade, on or before the first day of November, annually; and the commandant of brigade shall return to the commander-in-chief, on or before the first day of December in each year. All commandants named in this act shall make return of all commissioned and staff officers, non-commissioned staff officers, all members of volunteer or independent companies, all arms and accoutrements belonging to or in possession of their commandants, and all such returns shall be preserved by the adjutant general, in a book of records in his office; and an abstract thereof, showing the number of uniform volunteer militia, or active military of the territory, shall be by him forwarded to the war department at Washington city.

§ 12. TERM OF SERVICE.] Every non-commissioned officer and soldier of any volunteer company shall be held to duty therein for two years, unless some absolute disability shall occur after forming such company, or shall be discharged by the proper officer; and every such person, after the expiration of said term, and every commissioned officer, after serving a similar term, in conformity with the provisions of this act, shall be entitled to a certificate of such service; and such certificate shall be given to all such persons under the rank of brigadier-general, by general of brigade, and. if there be no brigadier, by officers of any brigade in command; and the holders of of such certificates shall be exempt from military duty in time of peace: *Provided*, That if any officer or person shall knowingly grant, issue or use any illegal certificate under the provisions of this act, such officer or person shall be deemed guilty of misdemeanor, and subject to pay a penalty in amount not less than five nor more than fifty dollars for each offense, to be collected before any court having competent jurisdiction, and when collected, to be paid into the military fund in the county where the offense was committed.

§ 13. COMPANIES, CONSTITUTION AND BY-LAWS.] Each volunteer company, organized under the provisions of this act, may adopt such constitution and by-laws as a majority of such company may approve, which shall be binding on all who sign the same; and when any fines are assessed, by reason of any infraction of such constitution and by-laws, such company may have process before any competent court of jurisdiction, in the name of the United States, for the use of such company, and prosecute to final judgment and execution all such fines and penalties provided for by such constitution or by-laws: *Provided*, That said constitution and by-laws are not inconsistent with the provisions of this chapter, or the constitution of the United States, or the act organizing the territory of Dakota: *Provided, also*, That in no case will the territory pay any costs of such prosecution.

§ 14. MILITARY COMMISSIONS.] All the military commissions issued, except the quartermaster-general, adjutant-general, paymaster-general and aide-de-camp to the commander-in-chief shall expire in two years from the date thereof: *Provided*, That any officer holding a commission under the provisions of this chapter, who may be reappointed to the same office, shall retain the same rank as he was entitled to under his former commission: *Provided, also*, That nothing in this chapter shall be so construed as to disqualify any staff officer or any officer of the line from holding a commission after he may have arrived at the age of forty-five years: *And further provided*, That every officer who shall remove out of the bounds of his command, or who shall be absent from his command without leave of the commanding officer of his brigade, shall be considered as having vacated his office, and a new appointment shall be made without delay, to fill the vacancy so created: *Provided*, That nothing in this act shall be so construed or understood as to prevent any appointed officer from being removed from his office whenever, in the opinion of the officer appointing him, he shall deem it advisable to remove him.

§ 15. ANNUAL MUSTER] There shall be held, once in each year, a brigade muster and encampment of all the volunteer militia in the territory, commencing at ten o'clock a. m., and continuing not more than four nor less than two days. Said muster and encampment shall be held at the most suitable place, to be selected by the commandant of brigade, and the officers and soldiers forming such encampment shall be drilled in accordance with the requirements of the rules and usages of the United States army; and the commandant of the brigade shall give thirty days' public notice of the time and place of such muster, which shall be held in the month of July, August or September.

§ 16. WHAT ENTITLES OFFICER TO COMMAND.] All officers appointed according to the provisions of this chapter shall be entitled to a certificate from the officer making such appointment, which certificate and taking the necessary oath shall entitle such officer to command, and to perform such other duties as may pertain to the office to which he is appointed, until the commission can be procured; and in all cases, the officers giving such certificate shall administer to such officer the necesssary oath of office, and indorse the same upon the back of his certificate with the day and date on which such oath was administered: *Provided, also*, That every staff officer who may be appointed shall also be entitled to a certificate in like manner.

§ 17. RESIGNATIONS.] For good cause shown, the commander-in-chief may accept the resignation of brigadier-generals, and the brigadier-general may accept the resignation of colonels, or the commandants of regiments, lieutenant-colonels, majors, captains and lieutenants; and for good cause shown, the commandant of any regiment, squadron, or battalion, shall accept the resignation of any regimental, squadron, or battalion staff officer: *Provided, also*, That the brigadier-general may accept the resignation of his staff officers; and in all cases when a resignation is accepted, the cause of such resignation shall be indorsed by the officer accepting the same, on the back of the commission so resigned; but the command of such officer shall not cease until the officer accepting such resignation shall have indorsed his acceptance.

§ 18. STAFF OFFICERS APPOINTED.] To each brigade there shall be one brigade major—to serve as brigade inspector—two aides-de-camp, one brigade quartermaster, one brigade engineer, one brigade judge advocate, one brigade surgeon and one brigade chaplain, which brigade staff shall be appointed by the commander-in-chief. To each regiment or battalion of artillery, rifle, light infantry, or infantry, there may be one chaplain, one adjutant, one quartermaster, one surgeon, one surgeon's mate, one sergeant-major, one quartermaster-sergeant, one drum-major, and one fife-major, to be appointed by the commandant of such regiment or battalion. To each regiment or battalion of cavalry there shall be one adjutant, one quartermaster, one paymaster, one surgeon, one surgeon's mate, one quartermaster-sergeant, one sergeant-major, and two regimental or squadron buglers, which shall be appointed by the commandant of such regiment or squadron.

§ 19. STAFF OFFICERS RANK.] The staff officers herein enumerated shall rank as follows, namely: The quartermaster-general and adjutant-general as brigadier-generals; the paymaster-general, engineer-in-chief, judge advocate general, and aides-de-camp to the commander-in-chief, as colonels; the aides-de-camp to brigadier-generals, chaplains and surgeons, as captains; company ensign, adjutants, quartermasters, paymasters, surgeon's mates of regiments, battalions, and squadrons, as lieutenants; and all other regimental or squadron staff, as non-commissioned officers.

§ 20. OFFICER'S UNIFORM.] The uniform of the respective officers herein mentioned shall be the same as the uniform of the officers in the United States army.

§ 21. OF COMPANY MUSTERS.] Each company shall muster as often as twice in each year, independent of the general muster.

§ 22. OFFICER TO TAKE OATH.] Each officer, before he enters upon the discharge of his duty, shall take and subscribe an oath to support the constitution of the United States, the provisions of this chapter, and the act organizing the territory of Dakota, and to faithfully and impartially discharge his duty to the best of his ability.

§ 23. OFFICERS AND PRIVATES TRIED—HOW.] Officers and privates shall be tried for misdemeanors and offenses in the same manner as provided in the army regulations of the United States.

CHAPTER 31.

MINES AND MINING.

LOCATION AND SIZE OF LODES AND MINING CLAIMS.

§ 1. LENGTH OF LODE.] The length of any lode claim hereafter located within this territory, may equal, but shall not exceed, fifteen hundred feet along the vein or lode.

§ 2. WIDTH OF LODE.] The width of lode claims shall be one hundred and fifty feet on each side of the center of the vein or crevice: *Provided*, That any county may, at any general election, determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election, and any county, by such vote at such election, may determine upon a less width than above specified: *Provided*, That not less than twenty-five feet on each side of the vein or lode shall be prohibited.

§ 3. DISCOVERER TO RECORD HIS CLAIM.] That the discoverer of a lode shall, within twenty days from the date of discovery, record his claim in the office of the register of deeds of the county in which such lode is situated, by a location certificate, which shall contain:

1. The name of the lode.
2. The name of the locator.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery shaft.
5. The number of feet in width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be.

§ 4. WHEN CERTIFICATE VOID.] Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.

§ 5. MANNER OF LOCATING CLAIM.] Before filing such location certificate the discoverer shall locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode; second, by posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; third, by marking the surface boundaries of the claim.

§ 6. MARKING SURFACE BOUNDARIES.] Such surface boundaries shall be marked by eight (8) substantial posts, hewed or blazed on the side or sides, facing the claim, and sunk in the ground, to-wit: One at each corner, and one at the center of each side line, and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

§ 7. REQUISITE OF LOCATION.] Any open cut, cross cut or tunnel, at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten (10) feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

§ 8. TIME DISCOVERER HAS TO PERFORM LABOR.] The discoverer shall have thirty days from the time of uncovering or disclosing a lode, to sink a discovery shaft thereon

§ 9. CERTIFICATE CONSTRUED TO CONTAIN.] The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically, with such parts of all lodes or ledges as continue, by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

§ 10. CLAIM NOT BEYOND EXTERIOR LINES.] If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

§ 11. CLAIMS SUBJECT TO RIGHT OF WAY. All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail which is now in use, or which may be hereafter laid out across any such location: *Provided always,* That such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack-trail without consent of the owners except by condemnation, as in case of land taken for public highways; parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writing; *And provided further,* That such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

§ 12. OWNER MAY DEMAND SECURITY FROM MINER.] When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused, may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

§ 13. FILING AN AMENDED CERTIFICATE.] If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an additional certificate subject to the provisions of this act: *Provided*, That such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations.

§ 14. WORK PERFORMED ANNUALLY.] The amount of work to be done or improvements made during each year to hold possession of a mining claim, shall be that prescribed by the laws of the United States, to-wit: One hundred dollars annually.

§ 15. AFFIDAVIT OF LABOR TO BE MADE:] Within six months after any set time or annual period herein allowed for the performance of labor or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit in substance, as follows:

TERRITORY OF DAKOTA, } ss.
County of .... }

Before me the subscriber personally appeared, ..., who being duly sworn, says at least .... dollars worth of work or improvements were performed or made upon (here describe claim or claims, or part thereof,) prior to the .... day of ...., A. D. 18.., situate in........ mining district, county of ...., Territory of Dakota. Such expenditure was made by or at the expense of ...., owner of said claim, for the purpose of holding said claim.

(Jurat.) (Signature.)

And such certificate when recorded in the office of the register of deeds of the county wherein such claim is located, shall be *prima facie* evidence of the performance of such labor.

§ 16. RELOCATING ABANDONED CLAIMS.] The relocation of abandoned lode claims shall be by sinking a new discovery shaft, and fixing new boundaries, in the same manner as if it were the location of a new claim, or the relocator may sink the original shaft, cut or adit to a sufficient depth to comply with sections five and seven of this chapter, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case, a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

§ 17. ONE CERTIFICATE, ONE LOCATION.] No location certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location, it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.

§ 18. FEE FOR RECORDING.] The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents.

DISPUTED MINING PROPERTY.

§ 19. JUDGE MAY ORDER SURVEY OF MINE—LIMITATIONS.] In all actions in any district court of this territory, wherein the title or right of possession to any mining claim shall be in dispute, the said court, or the judge thereof, may, upon application of any of the parties to such suit, enter an order for the under-ground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such suit, or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey, and observe the method of making the same; said second survey to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same; such court, or the judge thereof, may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property, when such removal is shown to be necessary to a just determination of the question involved; *Provided, however*, That no such order shall be made for survey and inspection, except in open court or in chambers, upon notice of application of such order of at least six days, and not then except by agreement of parties, or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

§ 20. JUDGE TO ISSUE WRITS OF INJUNCTION.] The district courts, or any judge thereof, sitting in chancery, shall have, in addition to the power already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property from which he or they may have been ousted by force and violence, or by fraud, or from which they are kept out of possession by threats, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued.

CHAPTER 32.

LOGS AND LUMBER.

§ 1. LAWFUL TO BOOM LOGS IN NAVIGABLE RIVERS.] It shall be lawful for any person having logs or lumber in any stream navigable for water crafts, in this territory, to boom such logs or lumber along the shore, and to secure the boom by means of piles driven in the stream, or by chains, ropes, timber or traverse poles, made fast at points along the shore: *Provided*, That there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such streams.

CHAPTER 33.

POLICE OF THE TERRITORY.

OF THE SETTLEMENT AND SUPPORT OF THE POOR.

§ 1. COUNTY COMMISSIONERS OVERSEERS.] The county commissioners of the several counties of this territory shall be the overseers of the poor within their several counties, and shall perform all the duties with reference to the poor within their respective counties, that may be prescribed by law.

§ 2. HOW DESIGNATED.] That every board of county commissioners shall, in discharging the duties imposed by this act, be designated as overseers of the poor.

§ 3. SUITS AGAINST.] In all suits or proceedings in favor of or against any such overseers of the poor, pertaining to or connected with the poor of their respective counties, the same shall be conducted in favor of or against such county in its corporate name.

§ 4. EVERY COUNTY SHALL RELIEVE ITS POOR.] Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the nineteen section of this act is provided.

§ 5. LEGAL SETTLEMENTS ACQUIRED—MARRIED WOMEN AND CHILDREN.] Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows:

1. A married woman shall always follow and have the settlement of her husband, if he have any within the territory, otherwise her own at the time of her marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

2. Legitimate children shall follow and have the settlement of their father, if he have any within the territory, until they shall gain a settlement of their own, but if the father have no settlement, they shall in like manner follow and have the settlement of their mother, if she have any.

3. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within this territory; but neither legitimate nor illegitimate children shall gain a settle-

ment by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

4. Every male person and every unmarried female over the age of twenty-one years, who shall have resided in any county in this territory ninety days, shall thereby gain a settlement in such county.

5. Every minor whose parents, and every married woman whose husband, has no settlement in this territory, who shall have resided ninety days in any county in this territory, shall thereby gain a settlement in such county.

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

7. Every settlement when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this territory, or by willful absence from the county in which such legal settlement had been obtained, for ninety days or more, and upon acquiring a new settlement, or upon the happening of such willful absence, all former settlements shall be defeated and lost; and the provisions of this section shall apply to cases of settlements begun to be acquired, or lost, or defeated, as well heretofore as after.

§ 6. OVERSEERS HAVE CARE OF POOR.] The overseers of the poor in each county shall have the oversight and care of all poor persons in their county, so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner provided by law.

§ 7. DUTY OF OVERSEERS.] It shall be the duty of the overseers of the poor, in counties wherein no common poor house is established, two weeks next preceding the first Monday of April in each year, to give public notice, by having published in the newspaper or newspapers in their respective counties, or in case no such newspaper is published in the county, by posting upon three public places in the county, an advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenance during the coming year, which sealed proposals shall be opened and acted on by said overseers of the poor, at their regular meeting beginning on the said first Monday in April; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions, at any time, for the keeping of such poor persons as may in the interim become a county charge, or of rejecting the propositions of such persons as they know to be unable to fulfil[1] their obligations to the said poor.

§ 8. COMMISSIONERS MAY ALLOW AND PAY IN THEIR DISCRETION.] The board of county commissioners may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who, from their general character, will probably be benefitted thereby, and also the parents of idiots, and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance.

§ 9. DUTY OF, ON COMPLAINT.] It shall be the duty of said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if in their judgment, the said poor have not been sufficiently provided with the common necessaries of life, or have in any respect been ill-treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such person or persons keeping them, as such overseers may deem reasonable and proper, and remove said poor and place them in the care of some other person.

§ 10. POOR BOOK.] The overseers of the poor shall enter in the poor book of their respective counties, all poor persons in their counties who are unable to care for themselves, and who shall, in their judgment, be entitled to the benefit of the provisions of this act, together with the date of such entry.

§ 11. APPEAL TO DISTRICT JUDGE.] If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the county in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the judge of the district court of the county or judicial subdivision may, if he shall think proper, direct the said overseers of the poor to receive him or her on the poor list, on his or her application therefor.

§ 12. WHEN SETTLEMENT UNCERTAIN.] If any one within the description of poor persons specified in this act, shall be found in any county, and the overseers of the poor of such county shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed, in their discretion, to provide for such poor person in the same manner as other persons are hereby directed to be provided for.

§ 13. TEMPORARY RELIEF TO CERTAIN POOR.] Whenever any person entitled to temporary relief as a pauper, shall be in any county in which he or she has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief, by placing him or her temporarily in the poor house of such county, if there be one, but if there be no poor house, then they shall provide the same relief as is customary in cases where a legal settlement has been obtained.

§ 14. JUSTICE OF PEACE MAY ISSUE WARRANT.] Upon complaint of any overseer of the poor, any justice of the peace may issue his warrant, directed to and to be executed by any constable, or by any other person therein designated, to cause any poor person found in the county of such overseer, likely to become a public charge, and having no legal settlement therein, to be sent and charged at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she can not be removed, such person shall be relieved by said overseers whenever such relief is needed.

§ 15. WHEN POOR PERSON FEELS AGGRIEVED—PROCEEDINGS.] If the overseers of the poor of any county in this territory, to which any pauper shall have been removed as above provided, shall feel themselves aggrieved by such order of removal, they may, at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal, to the district court of the county or judicial subdivision from whence the removal was ordered to be made, such appeal to be taken, tried and determined, and costs adjudged, as in other cases of appeal from a judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and right of the case.

§ 16. APPEAL—HOW HEARD.] Such appeal shall be heard at the term of the court next after the same is filed therein, if, in the opinion of the court, reasonable notice of the appeal has been given to the opposite party; but, if not thus given, the cause shall stand continued until the next term of the court, and notice of the appeal be then given, if not before done.

§ 17. WHEN ORDER IS DEFECTIVE.] If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made the appeal shall be heard and determined as if such order had not been defective.

§ 18. WHEN REMOVED.] If any person be removed by virtue of the provisions of this chapter, from any county, to any other place within this territory, by warrant or order under the hand of any justice of the peace, as hereinbefore provided, the overseers of the poor of the county to which such person shall be removed, are required to receive such person if he have a legal settlement in their county.

§ 19. OVERSEERS SHALL MAKE A RETURN TO CLERK.] The overseers of the poor shall make a return to the clerk of the board of county commissioners of the sums of money required for the poor of their respective counties, within fifteen days after every such contract hereinbefore provided for, shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board of county commissioners, in the same manner as other claims of the county are paid.

§ 20. PAY OF OVERSEERS.] The overseers of the poor in each county shall be entitled to receive each two dollars per day for each and every day during which they shall be necessarily employed in the discharge of their several duties as such, to be allowed by the board of county commissioners.

§ 21. SHALL SUBMIT ACCOUNTS—WHEN.] The overseers of the poor of the several counties, shall annually, at the first session of the board of county commissioners in the year, submit their accounts and make report of their proceedings for the past year, which report shall be presented to the clerk of the board of county commissioners at least one day prior to the meeting of said board, and said board may then credit and allow said accounts so presented, and may draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

§ 22. WHEN NON-RESIDENT IS SICK OR DIES.] It shall be the duty of the overseers of the poor, on complaint made to them that any person, not an inhabitant of their county, is lying sick therein or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any county, who shall not have money or means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such county to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of such overseers.

§ 23. SPECIAL ELECTION TO PURCHASE ASYLUM.] It shall be lawful for the board of county commissioners in the several counties of this territory, after having submitted the question to the legal voters of their counties, by calling a special election for the purpose whenever the said commissioners may deem it advisable, and if at said election a majority of the legal voters shall vote in favor of the proposition to purchase a tract of land in the name of their respective counties and thereon to build, establish and organize an asylum for the poor, and to employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same upon such terms and under such restrictions as the board shall consider most advantageous for the interests of the county, who shall be called "superintendent of the county asylum," and when two or more counties shall have jointly purchased any tract of land and erected an asylum for the poor of their respective counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized by a majority of the legal voters of their respective counties, in the manner prescribed in this section, to jointly purchase lands and erect asylums, and to do other things necessary and proper for the relief of the poor within the counties forming such joint ownership as is by this act provided for their respective counties.

§ 24. DUTY OF SUPERINTENDENT.] It shall be the duty of such superintendent or superintendents, to receive into his or their care and custody all persons who may become a county charge, as paupers, and to take such measures for the employment and support of such paupers, and to perform such other duties as the board of county commissioners shall, from time to time, order, establish and direct, consistent with the laws of this territory.

§ 25. SHALL APPOINT A PHYSICIAN—COMPENSATION.] It shall be the duty of the county commissioners to appoint, annually, a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.

§ 26. TO BIND OUT POOR CHILDREN.] It shall be the duty of the overseers of the poor of the different counties, and also of the superintendents of the county asylums, to bind out such poor children as fall under their care and charge, from time to time; and it shall also be the duty of said overseers to see that children so bound be properly treated by the persons to whom they are bound, and to take legal means of redress in case of maltreatment.

§ 27. BOARD ASSESS TAX TO PURCHASE POOR FARM.] To raise the sum necessary for the purchase of land, and the erection and furnishing of buildings for such asylums, the board of county commissioners in the several counties shall have power to assess a tax on property liable to taxation for raising a county revenue, not exceeding five hundred dollars, unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section twenty-three of this act, and a majority of all the votes cast at said poll be in favor of such assessment.

§ 28. ALL POOR GO TO ASYLUM.] So soon as the necessary provisions may be made by the erection of suitable buildings, the said board shall direct and order that all persons who have become permanent charges as paupers in the county be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable, and thereafter the overseers of the poor shall, from time to time, as persons may become permanent charges, as paupers, to their respective counties, have such persons removed to the said asylum.

§ 29. SUPERINTENDENTS GIVE BOND.] Such superintendent or superintendents shall give bond, with freehold security, to said board, in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty, and he, or they, shall make to such board, at the first and third sessions of each year, a detailed report in writing, of the time and manner of the admission of each pauper, their health and fitness to labor, the results of their industry, and the expenses incurred; and it shall be the duty of the members of such board, in person, to annually inspect said asylum, with regard to its fitness, in all respects, for the objects of its establishment.

§ 30. CHILDREN TO BE EDUCATED.] Whenever it shall be necessary and practicable, poor children of the asylums, who cannot be bound out, or whom it may not be expedient to bind out as apprentices, shall be educated thereat.

§ 31. SUPERINTENDENCE THEREOF.] It shall be the duty of the superintendent or superintendents of any asylum, erected or established by law, to superintend and direct the education of such poor children, according to the preceding provisions of this act, and for the purpose of carrying the same into effect with the least possible expense, it shall be the duty of the said superintendent to send them to any common school within the county in which the asylum is situated, during the continuance of its session.

§ 32. DISCONTINUANCE OF ASYLUM.] Any asylum or farm, provided by the board of county commissioners for the purpose, may be discontinued by said board, and the property real and personal, relating thereto, which belongs to the county, may be sold, leased, or otherwise disposed of, or applied in such manner as may be best for the interests of the county.

§ 32. BOARD MAY LEVY POOR TAX.] The board of county commissioners may, in the several counties, if they deem it expedient, annually, at their session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed to be raised. The tax hereby authorized to be raised shall be collected by the same officers whose duty it may be to collect the territorial and county revenue, who shall pay the same into the county treasury.

§ 34. APPEALS FROM JUSTICE OF PEACE.] All decisions of any justice of the peace, in any matter, proceeding or suit authorized by this law, may be appealed from in like manner, and under like regulations and restrictions of law, as in other cases.

§ 35. BOARD APPOINTS VISITORS.] The board of county commissioners may, in their discretion, appoint a board of visitors annually, to consist of three persons residents of the county, to visit at least once in each year the asylum of such county, and to report to the commissioners its condition, and the treatment, management and condition of the inmates thereof.

§ 36. COMPENSATION.] Such visitors shall receive such compensation as the said board shall adjudge reasonable.

§ 37. SENDING PAUPER OUT OF COUNTY UNLAWFUL.] It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending, or causing to be sent, out of the county where such person properly belongs, any pauper, or person who is, or is likely to become, an object of public charity, into any other county of this territory, except in the manner provided for in this chapter.

§ 38. PENALTY.] Any person who shall violate the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

BRINGING PAUPERS INTO A COUNTY.

§ 39. PENALTY FOR BRINGING IN PAUPERS.] Every person who shall bring into and leave any pauper in any county wherein such pauper is not lawfully settled, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, by an action in the name of the county; and no property shall be exempt from seizure and sale in such cases, and it shall be the duty of the board of county commissioners of the several counties to institute suits for all violations of this section; and any such sum, when collected, shall be paid into the county treasury for the use of the county.

OF THE CARE OF THE INSANE.

§ 40. GOVERNOR CONTRACTS FOR CARE.] The governor of this territory is authorized, and it is hereby made his duty, from time to time, to enter into contract with the States of Minnesota, Iowa or Nebraska, or either of them, as in his judgment will be most economical and advisable, for the keeping, maintaining, treating and the custody and care in an asylum in one of said States, of persons declared lunatics, from this territory.

§ 41. TERRITORIAL ASYLUM.] After such contract is made with the proper authorities of such state, the asylum of such state with which such contract is made, shall be the insane asylum for this territory, and any person who, under the provisions of any law now in force, or that may be hereafter enacted, shall be declared or adjudged a lunatic, or insane, and a proper subject for confinement in a lunatic asylum may be, by the proper officer or person, by direction of the lawful authority, taken to and confined in such asylum, the same as though such asylum were located within this territory.

§ 42. ALL PAST AND FUTURE ACCOUNTS TERRITORIAL CHARGE] It shall be the duty of the auditor of this territory to audit all accounts having accrued under the provisions of law for the keeping and care of lunatics, or that shall accrue for taking to confinement in, and caring for lunatics in, the insane asylum for the territory.

§ 43. VERIFICATION OF ACCOUNTS.] Such accounts shall be verified by the owner thereof, and approved by the probate court by whose order the person was confined, for whose keeping the charge is made: *Provided*, That persons who are so confined, that have estates, such estates shall be liable for their keeping.

§ 44. PROBATE JUDGE DECIDES SANITY.] Upon the filing of a verified petition in the office of the judge of probate, setting forth that any citizen of that county is insane, it shall be his duty to investigate the matter at once, as directed by law, and, if adjudged insane, the court may order that such person be confined in the insane asylum.

CHAPTER 34.

DOMESTIC ANIMALS.

MARKS AND BRANDS.

§ 1. RECORD OF MARKS AND BRANDS.] It shall be the duty of the register of deeds of each county, upon application of any person residing in such county, to record a description of the marks or brands, with which such person may be desirous of marking his horses, cattle, sheep, or hogs; but the same mark or brand shall not be recorded for more than one resident of the same county.

§ 2. USING RECORDED MARK—PENALTY.] If any person shall willfully mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded by any resident of the same county, and while the same mark shall be used by such resident, the person so offending shall forfeit for every such offense the sum of five dollars, to be recovered before any justice of the peace of such county. If any person shall willfully mark or brand the cattle, horses, sheep, or hogs of any other person with his own mark or brand, the person so offending shall forfeit, for every such offense, not less than ten nor more than fifty dollars; and if any person shall willfully destroy or alter any mark or brand upon any horse, cattle, sheep, or hog, belonging to another, the person so offending shall, upon conviction thereof, forfeit and pay for every such offense, a sum not less than ten nor more than fifty dollars, and shall, in addition, pay to the party injured double damages, and the costs.

OF ESTRAYS.

§ 3. ESTRAYS TAKEN BY RESIDENT ONLY.] No person shall take up an estray animal except in the county wherein he or she resides, and is a householder, or holds a claim under the pre-emption or homestead laws, nor unless the same be found in the vicinity of his or her claim or place of residence: *Provided*, That this shall not be so construed as to prevent taking up of any estray found in the uninhabited parts of this territory, and at a distance of ten miles from any habitation.

§ 4. LIMITATION IN TIME.] No person shall take up any estray animal mentioned in the next section between the first day of October and thirty-first day of March inclusive, unless the same be found trespassing upon the premises or within the inclosure of the person taking up the same.

§ 5. PUBLISHING ESTRAY NOTICE.] Every person who shall take up any estray horse, mare, colt, mule, ass, or any head of neat cattle, sheep, hog or goat, shall within fifteen days thereafter give notice of the finding and taking up of such animal, by posting a written advertisement thereof, with a description of such estray, and the marks and brands thereon, in three public places in the county wherein he resides, or by publishing such advertisement three times in a weekly newspaper, if there is a newspaper published in the county in which the estray is taken up, and if the same be not called for or claimed by any person within twenty-two days after the posting of such notice, or within three weeks after the first insertion of such notice in a newspaper, the person taking up such estray animal shall go before some justice of the peace of the county wherein he resides, and make oath that such animal was found estray by him, and the place where the same was found, that the marks and brands thereon have not been effaced or altered by him since the taking up, and that he hath duly advertised the same as required by law; every such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the advertisement of such estray as herein required.

§ 6. JUSTICE'S APPRAISEMENT JURY.] Such justice of the peace shall thereupon issue his warrant to three disinterested householders of the county, unless their attendance may be otherwise had, commanding them to attend at such place as may be therein mentioned, to appraise such estray; the appraisers so appointed, or any two of them, shall thereupon proceed to appraise such estray, and upon the completion of such appraisement, shall attend before the justice and report their appraisement in writing, to be subscribed and sworn to by them, setting forth a description of the estray appraised, the marks and brands thereon, the name and place of residence of the person taking the same up, and that the appraised value of such estray is a fair and true valuation thereof, and the justice shall thereupon enter such certificate in his docket.

§ 7. JUSTICE PUBLISHES DESCRIPTION] Upon the completion of such appraisement as aforesaid, the justice of the peace before whom the appraisement is had, shall forthwith post in three of the most public places in his county, or publish three times in a newspaper if there is a newspaper published in the county, a notice of the taking up of such estray, with a description thereof and of the marks and brands thereon, and the name and place of residence of the person taking up the same.

§ 8. REPORT TO REGISTER.] Such justice shall also transmit a copy of such affidavit or certificate of the appraisers, certified by him to be a true copy from his docket, to the register of deeds of his county within ten days after the completion of such appraisement.

§ 9. RECORD OF APPRAISEMENT.] Every register of deeds upon receiving any such certified copy of such appraisement shall forthwith cause the same to be recorded in a book to be kept in his office, to be entitled the "estray register."

§ 10. TWO OR MORE ANIMALS.] If two or more animals are taken up at the same time by the same person, both and all thereof shall be numbered in the same advertisement and appraisement, and the same fees are allowed as for the advertisement or appraisement of one estray.

§ 11. CLAIMANT MUST PAY CHARGES.] Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray shall go before the justice of the peace before whom such appraisement was had, or some other justice of the peace of the county, and such claimant shall make affidavit in writing, subscribed by him, setting forth his name and place of residence and that he is the owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant upon payment of all fees advanced by him, and his reasonable charges for keeping and caring for such estray. If the parties cannot agree as to the amount of such charges, the same shall be assessed by such justice of the peace and such assessment shall be final. Every affidavit required by this section shall be made and recorded upon and within the docket of such justice of the peace.

§ 12. DISPOSITION OF ESTRAY.] If any such estray be not claimed and taken away within one year after the appraisement thereof, as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised, as herein provided, and shall not in other respects have violated the provisions of this subdivision of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the person taking the same up.

§ 13. IF WORTH OVER FIFTY DOLLARS.] If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisement thereof, the person taking up such estray shall notify some justice of the peace of the county, and such justice shall appoint a day and place for the sale thereof, and cause notices of such sale to be posted in three public places in the county, at least twenty-two days before such day so appointed, or shall cause such notice of such sale to be published three times in a weekly newspaper, if there is one published in the county, and on the appointed day the person taking up such estray shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and caring for and keeping the same, to be fixed by such justice, and the fees advanced for the appraisement and advertisement of such estray, as herein provided, and after deducting the fees allowed such justice for such sale, and the advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer, who shall receipt to the justice therefor.

§ 14. TREASURER DISPOSES OF MONEY.] All moneys so deposited with the county treasurer shall by him be retained in the treasury for six months thereafter, separate and apart from all other moneys; and if the owner of any such estray so sold as aforesaid shall, within such period, appear before the board of county commissioners and establish his title to such estray, such board of commissioners shall order the amount so paid into the treasury to be refunded to such owner; if no such owner appear within six months after the deposit of any such sum of money as herein provided, the same shall be passed to the school fund of the county, and shall be accounted for and expended as other school moneys are.

§ 15. DESCRIPTION FILED.] Whenever any sum of money is paid into the county treasury by virtue of the thirteenth section, the justice paying the same shall deliver to the treasurer a certificate setting forth a description of the estray, from the sale of which the same was obtained and the marks and brands on such estray, and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall by the treasurer be filed and preserved in his office, to the end that the right of the owner of such estray to receive such sum of money may be readily established.

§ 16. FEES A FIRST LIEN.] The fees of justices of the peace, advertising and appraisers shall be paid by the person taking up the estray, but the same shall constitute a first lien upon the estray, and shall be paid by the owner before he shall be entitled to take away such estray.

§ 17. UNLAWFUL TAKING—PENALTY.] If any person not authorized so to do, shall take up any estray or lost goods, or if any person taking up any such estray or any lost goods shall willfully neglect to cause the same to be advertised and appraised as herein provided or shall work or use any such estray beast, except in a prudent manner, and so as not to injure the same, or shall, when working such beast fail to sufficiently feed and properly care for the same, every such person so offending shall forfeit twenty-five dollars to the owner of such estray, to be recovered by action of debt before any justice of the peace: *Provided, however*, That such action shall not be a bar to an action commenced by the owner of such estray against the person taking up the same, if such animal should receive a permanent injury or be rendered useless because of ill treatment inflicted, or neglect received from the person taking up such estray.

§ 18. WORK OF ESTRAY.] Any person taking up any estray may work and use the same in a prudent manner and so as not to injure the same, but during the time of working and using such estray shall not be allowed to charge or receive any compensation for the keeping thereof.

§ 19. LOSS OF ESTRAY.] If any estray after being duly advertised and appraised as herein provided, shall, without the fault of the person taking up the same, die, or be stolen, or escape and wander away, the person taking the same up shall not be responsible therefor.

§ 20. SALE AT COUNTY SEAT.] The place of sale of estrays under this chapter shall be at the county seat of the county in which the estray is appraised.

OF LOST GOODS.

§ 21. PROCEEDINGS SAME AS ESTRAYS.] The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highway or in any other place, shall be the same as herein provided for estrays.

CHAPTER 35.

SALE OF INTOXICATING LIQUORS.

§ 1. BOND AND LICENSE REQUIRED.] It shall be unlawful for any person by himself, by agent, or otherwise, to sell in any quantity, intoxicating liquors to be drunk in, upon, or about the premises where sold, or to sell such intoxicating liquors to be drunk in any adjoining room, building, or premises, or other place of popular resort, connected with said premises where sold, without having first obtained a license and given bond as hereinafter provided.

§ 2. BOARD GRANTS LICENSE—LIMITATIONS.] All applications for license to sell intoxicating liquors shall be made to the board of county commissioners, and shall be granted by said board if they deem it expedient and the applicant a proper person to engage in the same; and no license shall run for a longer period than one year, without renewal.

§ 3. LICENSE FEE, PENALTY AND CONDITIONS OF BOND.] Before any license is issued the applicant shall produce the receipt of the county treasurer showing that he has paid into the county treasury the amount fixed by the board for such license, to be at the rate of not less than thirty dollars nor more than three hundred dollars per year, and execute and deliver to said board his bond to the territory of Dakota, which shall be in the penal sum of five hundred dollars, with at least two good and sufficient surety, to be approved by the board of county commissioners, conditioned that the person applying for the license shall keep a quiet and orderly house; that he will not permit any gambling in, upon, or about the premises where the intoxicating liquors are sold, or in any adjoining room, building or premises, or other place of popular resort connected with said premises where sold, and shall well and faithfully keep and observe the laws of the territory and the provisions of any ordinances or regulations of the municipality wherein such business shall be conducted, relating to the keeping of saloons, taverns and the sale of intoxicating liquors, and shall close his place or house of business at the hour of eleven-thirty o'clock p. m., every night.

§ 4. HABITUAL INTOXICATION—NOTICE—PENALTY.] Any wife, mother, father, son, daughter, sister or other relative of a person who is in the habit of getting intoxicated, or the county commissioner, or the mayor of any city, may make complaint to any justice of the peace of the county where such person resides, or may be staying, alleging the name or names of the person or persons from whom said person having such habit obtains his liquor, as such relative believes, and thereupon said justice of the peace shall, without charge therefor, issue a notice in writing to such person or persons so named, notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them, or at his or their place of business, to such person having such habit, and which notice must at once be served upon such person or persons, as summons' are served from justices' courts, and after the service of such notice if any person or persons so notified shall sell, give away, or permit any person at his place of business to sell or give away any intoxicating liquors to such person about whom he or they have received notice as aforesaid, his license to sell liquors shall from that time be deemed and held to be cancelled and annulled, and said person so selling or giving away shall be fined in any sum not less than one hundred dollars, and not not more than five hundred dollars, and be liable in a civil action at the suit of such relative to pay him, her or them the sum of five hundred dollars damages for each offense, and no property of any kind shall be exempt from payment of such fine or damages.

§ 5. CONVICTION REVOKES BOND.] When any person so licensed shall be convicted of a violation of any of the provisions of this chapter or of the penal statutes of this territory relating to the sale of intoxicating liquors; or shall violate any of the conditions of said bond, the board of county commissioners may, and it is hereby made their duty, to revoke such license, but such revocation shall not be construed to discharge such licensee or his sureties from liability on such bond for any damage sustained by or right accrued to any person prior to such revocation.

§ 6. COUNTY, TOWN AND CITY AUTHORITY.] It shall be competent and lawful for any incorporated town or city, within the county where such bond is filed and license granted, to prohibit the party so licensed, as well as all others, from engaging in the business of selling intoxicating liquors to be drunk in, upon, or about the premises where sold, within the corporate limits, until he shall obtain from the town or city authorities a license, and pay into the town or city treasury such sum as may be fixed by ordinance, to be not less than thirty dollars nor more than three hundred dollars: *Provided*, That no additional bond shall be required; nor shall any license be granted by the authorities of any such town or city to any one who has not filed the required bond with the board of county commissioners, and obtained from such board a license: *And provided further*, That no license granted by any such town or city shall run for a longer period than the license granted by said board, and the revocation of the county license by the board of county commissioners shall work a revocation of any license granted under the provisions of this section.

§ 7. BOTH MAY REQUIRE LICENSE FEE.] It shall be competent and lawful for both the board of county commissioners of any county, and also the mayor and city council, or other authorities of any town or city situated therein, to require the payment of the license herein provided, and the granting of the power to license or tax in any city or town charter shall not be held as conflicting in any way with the provisions of this act, the intention being to allow both the county and town or city authorities to levy and collect a license for the sale of intoxicating liquors as herein provided, or as provided by the charter or ordinances of such town or city.

§ 8. CARE OF INTOXICATED PERSON.] Every person who shall, by the sale of intoxicating liquors, with or without a license, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, which sum may be recovered in an action of debt.

§ 9. GIVING IS SELLING.] The giving away of intoxicating liquors, or other shift or device to evade the provisions of this chapter, shall be deemed and held to be an unlawful selling within the provisions of the the same.

§ 10. VIOLATION A MISDEMEANOR.] Every person selling intoxicating liquor in violation of the provisions of this chapter, or without having first complied with the requirements of the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not less than twenty dollars nor more than one hundred and fifty dollars.

§ 11. EXEMPTIONS LIMITED.] For the payment of all fines, costs and damages assessed against any person or persons, in consequence of the sale of intoxicating liquors, as provided in this chapter, the real estate and personal property of such person or persons, of every kind, shall be liable, except such property as now is exempted by law: *Provided*, Said exemption shall not embrace any wines, liquors or furniture used in carrying on the trade of a retailer of intoxicating liquor, and such fines, costs and damages shall be a lien upon such real estate until paid; and all the furniture, liquors, glasses, bottles and barrels in the custody of any person selling intoxicating liquors, shall be liable to seizure and sale to pay any fine or judgment against such person so selling intoxicating liquors.

§ 12. BOND INCLUDES ALL CONDITIONS.] All the conditions required to be included in the bond mentioned in section three of this chapter shall form and constitute a part of every such bond without being expressed therein, or if only partially set forth or referred to therein; and no such bond shall be void upon the first recovery, but it may be sued and recovered upon from time to time, as herein authorized, until the whole penalty is exhausted.

§ 13. OFFICERS MAKE COMPLAINT.] It is hereby made the duty of the district attorney, sheriff, constables and justices of the peace, knowing of any violations of the provisions of this act, to make complaint thereof to the grand jury of the next term of the district court of the county or judicial subdivision in which the offense may have been committed, or to make complaint to a justice of the peace who shall have power to bind over the offender to appear and answer at the next term of the district court.

§ 14. REPORT OF CLERK TO GRAND JURY.] Every county clerk shall, on the first day of the term of each district court, deliver to the grand jury an accurate list of all persons holding license under the provisions of this act within the county, which list shall show the date and expiration of such license.

§ 15. GRAND JURY INDICT.] It shall be the duty of the grand jury at each and every term of the district court in every county or judicial subdivision to make a strict inquiry and return bills of indictment against every person violating any of the provisions of this chapter.

CHAPTER 36.

PEDDLERS' AND AUCTIONEERS' LICENSE.

§ 1. LICENSE REQUIRED.] No auctioneer, peddler, or other person or persons, company or corporation, shall be permitted to sell, vend or retail, either at private sale or public auction, any goods, wares or merchandise, without having first obtained a license for that purpose, as hereinafter provided.

§ 2. COUNTY BOARD GRANTS LICENSE] The board of county commissioners of the respective counties shall have power to grant such license on the payment into the county treasury, by the applicant for such license, of a sum to be assessed and fixed by said board, not less than ten dollars, nor more than one hundred dollars.

§ 3. AUTHORITY UNDER LICENSE.] Such license shall authorize the person receiving it to vend, sell and retail goods, wares and merchandise, within said county, for the period of one year from the time of granting the same.

§ 4. COUNTY CLERK'S POWERS.] If the board of county commissioners be not in session when the application is made, the county clerk may grant a written permission to the applicant to vend, sell and retail goods, wares and merchandise, until the end of the next session of the board of county commissioners, or, if said board take no action upon the case, for the term provided in the third section of this chapter; and, at the time of granting such license, the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

§ 5. CLERKS' PERMITS REVOCABLE BY BOARD.] When permission shall be granted in vacation, as aforesaid, it shall be the duty of the board, at their next regular meeting thereafter, to examine such permit, and, if approved, to proceed forthwith to assess and fix the amount to be paid for such license thereafter, which amount shall be paid as in the case of original applications; but if the board of county commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than that fixed by the county clerk.

§ 6. PENALTY FOR VIOLATION.] If any person or persons, company or corporation, shall, directly or indirectly, keep an auction store, or sell, vend or retail any goods, wares or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not less than ten dollars nor exceeding two hundred dollars.

§ 7. MERCHANTS TAXED NOT INCLUDED.] Nothing in this act shall be so construed as to extend to the sale of goods, wares and merchandise by merchants who pay an annual tax upon the same, assessed according to the revenue laws of this territory, nor to persons who sell commodities manufactured or raised by themselves in this or any adjoining territory.

CHAPTER 37.

WEIGHTS.

§ 1. BUSHELS OF ARTICLES FIXED BY WEIGHT.] A bushel of each of the articles enumerated in this section shall consist of the number of pounds avoirdupois, respectively affixed to each, viz:

Barley, forty-eight pounds.
Beans, sixty pounds.
Bran, twenty pounds.
Buckwheat, forty-two pounds.
Beets, sixty pounds.
Broom-Corn Seed, thirty pounds.
Corn, shelled, fifty-six pounds.
Corn, in the ear, seventy pounds.
Clover Seed, sixty pounds.
Coal Stone, eighty pounds.
Flax Seed, fifty-six pounds.
Lime, eighty pounds.
Oats, thirty-two pounds.
Onions, fifty-two pounds.
Potatoes, Irish, sixty pounds.
Potatoes, sweet, forty-six pounds.
Peas, sixty pounds.
Rye, fifty-six pounds.
Salt, eighty pounds.
Turnips, sixty pounds.
Timothy Seed, forty-two pounds.
Wheat, sixty pounds.

§ 2. TON OF HAY, CUBIC MEASURE.] A ton of hay shall consist of two thousand pounds; or, by measurement, three hundred and forty-three cubic feet, after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties.

§ 3. CUBIC FEET IN PERCH.] A perch of mason work or stone is hereby declared to consist of twenty-five feet cubic measure.

CHAPTER 38.

HOMESTEAD AND THE CONVEYANCE THEREOF.

§ 1. EXEMPT FROM JUDICIAL SALE OR JUDGMENT.] The homestead of every family resident in this territory, as hereinafter defined, whether such homestead be owned by the husband or wife, so long as it continues to possess the character of a homestead, shall be exempt from judicial sale, from judgment lien, and from all mesne or final process issued from any court.

§ 2. FAMILY DEFINED.] A widow or widower though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

§ 3. CONVEYANCE OF, LIMITED.] A conveyance or incumbrance by the owner of such homestead, shall be of no validity unless the husband and wife, if the owner is married and both husband and wife are residents of the territory, concur in and sign the same joint instrument.

§ 4. LIABLE FOR ITS TAXES ONLY.] The homestead shall be liable for taxes accruing thereon, and if certified and recorded as hereinafter directed, shall be liable only for such taxes, and shall be subject to mechanics' lien for work, labor or material done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

§ 5. LIABLE FOR PURCHASE MONEY.] The homestead may be sold for any debt created for the purchase thereof.

§ 6. MUST EMBRACE RESIDENCE.] The homestead must embrace the house used as a home by the owner thereof, and if he or she has two or more houses thus used at different times and places, such owner may select which he or she will retain as a homestead.

§ 7. EMBRACE ONLY CONTIGUOUS TRACTS.] It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous, or unless they are habitually and in good faith used as part of the same homestead.

§ 8. AREA EMBRACED.] If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than one hundred and sixty acres.

§ 9. BUILDINGS EMBRACED—DEFINED.] It must not embrace more than one dwelling house or any other buildings except such as are properly appurtenant to the homestead as such, but a shop, store or other building situated thereon and really used or occupied by the owner in the prosecution of his own ordinary business, may be deemed appurtenant to such homestead.

§ 10. SELECTION AND MARKING.] The owner, or the husband or wife may select the homestead, and cause it to be marked out, and platted and recorded as provided in the next section. A failure in this respect shall not leave the homestead liable, but the officer having the execution against the property of such a defendant may cause the homestead to be marked off, platted and recorded, and may add the expense thence arising to the amount embraced in his execution.

§ 11. HOW MARKED AND DESCRIBED.] The homestead shall be marked off by fixed and visible monuments, unless the same shall embrace the whole of a subdivision or lot, and in giving the description thereof when marked off as aforesaid, the direction and distance of the starting point from some corner of the dwelling house shall be stated. The description of the homestead, certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county in a book to be called the "homestead book," which shall be provided with a proper index.

§ 12. CHANGE OF HOMESTEAD—LIMITATIONS.] The owner may from time to time change the limits of the homestead by changing the metes and bounds as well as the record of the description or may change it entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto; and no such change of the entire homestead made without the concurrence of the husband or wife, shall affect his or her rights or those of the children.

§ 13. NEW HOMESTEAD EXEMPT.] The new homestead shall in all cases be exempt to the same extent and in the same manner as the old or former homestead was exempt.

§ 14. DISPUTED HOMESTEAD.] When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, it shall be competent for the district court, in any proper case, to determine such question, and all questions relating thereto.

§ 15. ORDER OF SUCCESSION TO.] Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead, until it is otherwise disposed of according to law; and, upon the death of both husband and wife, the children may continue to possess and occupy the whole homestead until the youngest child becomes of age.

§ 16. DESCENDS FREE OF DEBT.] Such homestead shall descend according to the law of succession as provided by the civil code, unless otherwise directed or disposed of by will, and shall be held exempt from any antecedent debt of the parent, and, if it descend to the issue of either husband or wife, it shall be held by such issue exempt from debts of such husband or wife, except as in the following section provided.

§ 17. IF NO SURVIVOR, LIABLE FOR DEBT.] And if there be no husband or wife surviving, and no issue, the homestead shall be liable to be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

§ 18. LIMITATION OF DEVISE.] Subject to the rights of the surviving husband or wife, as declared by law, the homestead may be devised like other real property of the testator.

§ 19. FAMILY FURTHER DEFINED.] Every family, whether consisting of one or more persons, in actual occupancy of a homestead, as defined in this chapter, shall be deemed and held to be a family within the meaning of this chapter.

CHAPTER 39.

COMPENSATION OF PUBLIC OFFICERS.

§ 1. The salaries and fees of the several officers hereinafter named shall be as follows, to-wit:

TERRITORIAL AUDITOR.

§ 2. The salary of the territorial auditor shall be three hundred dollars per annum, which shall be payable quarterly; and he shall receive twenty-five dollars annually for office rent, fuel and stationery.

TERRITORIAL TREASURER.

§ 3. The salary of the territorial treasurer shall be three hundred dollars per annum, which shall be payable quarterly; and he shall receive twenty-five dollars annually for office rent, fuel and stationery.

CLERKS OF THE DISTRICT COURTS.

§ 4. The clerks of the district courts shall be entitled to charge and receive for their fees and services the emoluments prescribed by section 828 of the revised statutes of the United States so far as the same is applicable to the business in the district courts of counties and subdivisions, and for any item not embraced within said section of the United States law, such compensation as may be allowed by the rules of the court.

THE DISTRICT ATTORNEY.

§ 5. The salary of each district attorney shall be not to exceed six hundred dollars per annum, which shall be payable quarterly from the territorial treasury; and he shall receive in addition thereto the following fees, to be audited and paid like other claims against the counties:

For each conviction on plea of guilty, five dollars.

For each jury trial in cases of misdemeanors, ten dollars.

For each jury trial in cases of felony, twenty dollars.

For each judgment for costs only, five dollars.

For all fines and forfeitures actually collected by him, ten per cent. upon all sums less than fifty dollars, and three per cent. upon all sums above that amount.

§ 6. In all cases of conviction the fees contemplated in the preceding section shall be taxed against the defendant, and, when collected, paid into the county treasury: *Provided*, That the section giving a salary shall not apply to the county district attorneys.

REGISTER OF DEEDS.

§ 7. The register of deeds is entitled to charge and receive the following fees:

For recording deed, mortgage or other instrument, and indexing, for the first four hundred words, seventy-five cents.

For each additional folio, ten cents.

Copy of record, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Making certified abstract of title, for the first deed or transfer, one dollar.

And for each additional deed or transfer, ten cents.

Entering satisfaction of mortgage or lien, twenty-five cents.

For recording each certificate of marriage, twenty-five cents.

For recording marks and brands, each, twenty-five cents.

For filing and indexing chattel mortgage, twenty-five cents.

COUNTY CLERK.

§ 8. For performing the duties of clerk of the county commissioners, and attending to the business of the county, the county clerk shall receive such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of six hundred dollars.

For each certificate and seal in other cases, twenty-five cents.

SHERIFF.

§ 9. The sheriff shall be entitled to charge and receive the following fees:

Serving capias with commitment or bail bond and return, two dollars.

For each search on search warrant, one dollar.

Arresting under search warrant, each defendant, one dollar.

Serving summons, order of attachment, order of replevin, writ of injunction, scire facias, citation, or other mesne process, and return thereof, sixty cents.

Each defendant, besides the first, fifty cents.

Copy of summons, order of attachment, twenty-five cents.

Copy of writ of injunction, scire facias, each ten words, one cent.

Serving subpœna for witness, each person, twenty-five cents.

Taking and filing replevin bond, or other indemnification, to be furnished and approved by the sheriff, one dollar.

Traveling expenses, for each mile actually and necessarily traveled, ten cents.

Making copy of any process or bond or paper, other than herein provided, for every ten words, one cent.

Levying writ of execution and return thereof, one dollar.

Levying writ of possession, with the aid of the county, three dollars and fifty cents.

Levying writ of possession, without the aid of the county, two dollars.

Summoning grand jury, including mileage, to be paid by the county, eight dollars.

Summoning petit jury, including mileage, to be paid by the county, sixteen dollars.

Summoning special jury, for each person empaneled, twenty-five cents.

Serving notice of motion, or other notice or order of court, fifty cents.

Executing writ of habeas corpus, and return, one dollar and twenty-five cents.

Serving writ of restitution, and return, one dollar and twenty-five cents.

Calling inquest to appraise any goods and chattels which he may be required to have appraised, sixty cents; and to each appraiser, to be taxed as costs, one dollar.

Advertisement of sale in newspaper, in addition to the printing, sixty cents.

Advertising in writing for sale of personal property, one dollar.

Posting notices of sale of real property, one dollar.

Executing writ or order of partition, two dollars.

Making deed for lands sold on execution, or order of sale, two dollars.

Committing prisoner to prison, or discharging therefrom, fifty cents.

Opening court and attending thereon, per day, to be paid by the county, two dollars.

Commission on all money received and disbursed by him on execution or order of sale, order of attachment, decree, or on sale of real or personal property, shall be, for each dollar not exceeding four hundred dollars, three cents.

For every dollar above four hundred dollars, and not exceeding one thousand dollars, two cents.

For every dollar above one thousand dollars, one cent.

In all cases in the district court, when persons in whose favor the execution or order of sale is issued, shall bid in the property sold on execution or decree, the sheriff or master making such sale, shall receive five dollars as his per cent. on such sale, and no more.

For boarding prisoner, per day, not exceeding seventy-five cents, to be determined by the board of county commissioners.

For distributing ballot boxes to the various precincts, two dollars per day and mileage.

For executing death warrant, such fee as the board of county commissioners shall deem reasonable and just, to be paid by the county.

In all cases where personal property shall be taken by the sheriff on execution, or on an order of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value of the same as in case of sale.

§ 10. The sheriffs of the several counties, for performing the duties required by law to be performed by them in the probate or justices' court, shall receive the same fees as are allowed for similar service in the district court, to be taxed against the proper party or parties by the probate judge or justice.

CORONER.

§ 11. The coroner shall be entitled to charge and receive the following fees:

For viewing a dead body, one dollar.

Summoning and qualifying an inquest, fifty cents.

Drawing and returning inquisition, for each ten words, one cent.

For physician making post mortem examination of dead body, not to exceed in any case, ten dollars.

To be paid out of any goods, chattels, lands and tenements of the slayer, in case of murder or manslaughter, if he hath any, otherwise by the county, with mileage for distance actually traveled to and from the place of viewing the dead body.

For all other services rendered, the same fees as are allowed the sheriff, and mileage.

MASTER IN CHANCERY.

§ 12. A master in chancery shall be entitled to charge and receive the following fees:

For copying any paper or instrument of writing, taking testimony, for every ten words, one cent.

Swearing each witness, ten cents.

Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.

And such additional fee as the court shall allow, not exceeding in any one cause, the sum of ten dollars.

Certificate and seal, twenty-five cents.

Taking affidavit, twenty-five cents.

For all services pertaining to the sale of real estate the same fees as are allowed by law to the sheriff in like cases.

FEES IN PROBATE COURT.

§ 13. The judge of the probate court shall be entitled to charge and receive the following fees:

Filing petition for appointment of administrator, executor and guardian, or for the revocation of the same, fifty cents.

Granting letters testamentary, or of administration when not contested, seventy-five cents, and when contested or opposed, one dollar and fifty cents, and for order revoking the same, fifty cents.

Hearing any complaint, or an application for the appointment of a guardian, fifty cents.

Appointing a guardian, fifty cents; and when one guardian shall be appointed for more than one person at the same time, twenty-five cents for each person after the first, for whom such guardian shall be appointed.

Judgment or order for probate of will, when not contested, seventy-five cents; when contested, one dollar and fifty cents.

For reducing to writing the testimony of witness, in cases required by law, ten cents for every one hundred words.

Certificate of probate attached to will, twenty-five cents.

Recording will and certificate of probate, ten cents for every one hundred words.

For issuing warrant of arrest or to compel attendance, fifty cents.

For every commitment to jail of any person, fifty cents.

Recording letters testamentary and of administration, and bonds, in each case, one dollar.

Judgment or order for settling an estate, fifty cents.

Order for distribution, fifty cents.

Order of sale of personal or real estate, fifty cents.

Examining and allowing an inventory, fifteen cents for each folio.

Administering an oath to an executor, administrator or other person, in cases provided for by law, ten cents.

Examining and passing upon accounts of executors, administrators, guardians and other persons, for the first folio, twenty-five cents, and for each additional folio, ten cents.

For each citation, summons, or other process, twenty-five cents.

Issuing a commission to examine and pass upon claims against an estate, or to partition property, fifty cents.

Appointment of appraisers of the property of an estate, fifty cents.

Approving and filing a bond given on an appeal, twenty-five cents.

Approving bonds of administrators, executors or others, twenty-five cents.

Order for an allowance to a family, widow or minor children, twenty-five cents.

Order for sale of personal estate, or for publication of any notice, or any other ordinary order in proceedings before him, where no other provision is expressly made, twenty-five cents.

Making and entering order confirming sale, fifty cents.

For issuing order to show cause, twenty-five cents.

Filing petition for sale of property and hearing same, fifty cents.

Each order for sale of real estate to pay debts of an estate, fifty cents.

Extending time for settling on an estate, on examining and allowing claims against an estate, twenty-five cents.

Granting reference of accounts of executors or administrators, or allowing report thereon, fifty cents.

For a bond of executors, administrators or guardians, on an appeal, twenty-five cents.

Disallowing application for letters of administration or probate of a will, to be paid by the party applying, fifty cents.

Proportioning an insolvent estate among the creditors, seventy-five cents.

Entering the account of an executor, administrator or guardian, ten cents for each folio.

Entering each oath of an executor or administrator, ten cents.

Searching the records or files in his office, for each year, twenty-five cents.

Every judgment, decree or order in nature of judgment, not otherwise provided, fifty cents.

Recording any matter required to be recorded, not otherwise herein provided for, ten cents for each folio; and when any will or other matter is recorded in any other than the English language, for each folio, twenty cents.

For a translation of any will from any other language, for each folio, twenty-five cents.

Copies and exemplifications of the probate of any will, of letters testamentary, or of administration, or of any other proceeding or order had or made before him, or any other papers filed or recorded in his office, transmitted on appeal, or furnished on the request of any person, for each folio, ten cents.

§ 14. The amount of fees charged in any case not contested shall in no case exceed fifteen dollars, unless the same be audited and certified to be just by the judge of the district court.

COUNTY TREASURER.

§ 15. Each county treasurer shall receive for his services the following fees:

On all money collected by him for each fiscal year, four per cent.

On all sums collected per centage shall be allowed but once, and in computing the amount collected for the purpose of charging per centage, all sums, from whatever source derived, shall be included together, except the school fund.

For going to the office of the territorial treasurer to settle with that officer and returning therefrom, a traveling fee of ten cents per mile, to be paid out of the territorial treasury.

For advertising and selling lands for delinquent tax, an additional fee of five per cent., to be paid only so far as the lands are actually sold, and out of the fund received therefor, and to be collected in each case when the lands are sold, and from the purchaser; but for all other cases and services the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, territorial or county warrants.

On school moneys by him collected he shall receive a commission of but two per cent.

For each and every levy he or his deputy shall make on personal property for the satisfaction of a tax or taxes, he shall receive a fee of one dollar and five cents for every mile actually traveled by him, to be collected out of the property levied on by him, and for the sale of personal property so levied on by him, he shall receive a fee of one dollar, to be collected out of the property so levied on by him.

§ 16. In all cases, where persons reside outside of the territory, apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of twenty-five cents for each tax receipt by him sent to such person.

NOTARIES PUBLIC.

§ 17. Notaries public are entitled to charge and receive the following fees:

For each protest, one dollar and fifty cents.
For recording the same, fifty cents.
For taking affidavit and seal, twenty-five cents.
For administering oath or affirmation, ten cents.
For taking deposition, each ten words, one and a half cents.
For each certificate and seal, twenty-five cents.
For taking proof of acknowledgment, twenty-five cents.

JUSTICES OF THE PEACE.

§ 18. Justices of the peace shall be entitled to charge and receive the following fees:

Docketing each cause, twenty-five cents.
Taking affidavit, twenty-five cents.
Filing petition, bill of particulars, or other paper necessary in a cause, ten cents.
Issuing summons, capias, subpœna, order of arrest, or venire for jury, fifty cents.
Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents.
Issuing writ of restitution, and entering return therein, one dollar.
Administering oath or affirmation to witness, ten cents.
Entering judgment in any cause, fifty cents.
Taking acknowledgment of deed or other instrument, twenty-five cents.
Swearing jury, twenty-five cents.
Copy of appeal, certiorari, or copy of pleadings or other papers for any purpose, for each ten words, one cent.
Taking depositions, for each ten words, one cent.
Certificate, twenty-five cents.
Issuing warrant or mittimus, fifty cents.
Taking information or complaint, fifty cents.
Discharge to jailor, twenty-five cents.
Dismissal, discontinuance or satisfaction, twenty-five cents.
Written notice to party or parties, ten cents.
Filing notice and opening judgment for rehearing, fifty cents.
Each adjournment, fifty cents.
Performing marriage ceremony, three dollars.
Each day's attendance upon trial of a cause, after the first day, two dollars.

Taking and approving bail bond, twenty-five cents.

Entering voluntary appearance of defendant, twenty-five cents.

Issuing attachment, fifty cents.

Entering motion or rule, ten cents.

Rule of reference to arbitrators, fifty cents.

Entering award of arbitrators, twenty-five cents.

Commission on money collected on judgment without execution shall be one per cent. on the amount.

CONSTABLES.

§ 19. Constables shall be allowed the same fees as are allowed to sheriffs for like services.

JURORS.

§ 20. For each day's attendance at any district court, as grand, petit or special juror, to be paid by the county, two dollars.

Traveling expenses for each mile actually traveled, the mileage to be circular and paid by the county, five cents.

For juror in justice's court, each case, one dollar.

COUNTY SURVEYORS.

§ 21. Three dollars per day when actually employed and mileage.

For each lot laid out and platted in any city or town, twenty-five cents.

For each copy of plat and certificate, fifty cents.

Recording each survey, twenty-five cents.

For each mile actually and necessarily traveled in going to work, ten cents each way.

For establishing each corner, twenty-five cents.

For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars.

For surveying county roads per day, three dollars.

Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

PRINTERS.

§ 22. For printing and publishing legal advertisements in newspapers, as follows:

Each square of one hundred words for the first insertion, seventy-five cents.

Each subsequent insertion, for each square of one hundred words, fifty cents.

In legal advertisements, each one hundred words, or fractional part thereof over twenty-five words, shall be deemed a square.

For publishing descriptions of delinquent lands, as provided in the revenue law.

ASSESSOR.

§ 23. Each assessor, or his deputy, shall receive for his services, for each and every day actually engaged, the sum of three dollars.

COUNTY COMMISSIONERS.

§ 24. County commissioners shall each be allowed, for the time they shall be necessarily employed in the duties of their office, the sum of three dollars per day, and five cents per mile for the distance actually traveled in attending the meetings of the board, and when engaged in other official duties, to be paid out of the general county fund.

WITNESSES.

§ 25. For each day's attendance before the district court, or before any other court, board or tribunal, in all civil and criminal cases, one dollar; and for each mile actually traveled one way, ten cents: *Provided*, That in all criminal cases, witness fees shall be paid out of the treasury of the proper county.

TAXATION OF JURY FEES.

§ 26. There shall be paid by the party against whom a verdict is rendered in the district court, a jury fee of five dollars, to be taxed in the bill of costs; and, when collected, to be paid into the county treasury; and for each trial by the court, a fee of one dollar, to be taxed, collected and paid in a like manner, for the use of the county.

§ 27. In each criminal case tried by a jury, upon a conviction of the defendant or defendants, there shall be taxed, in the bill of costs, a fee of six dollars as a jury fee, and judgment therefor shall be rendered against such defendant or defendants, which sum, when collected, shall be paid into the county treasury for the use of the county.

FEES IN MATTERS OF ESTRAYS.

§ 28. The following fees are allowed in cases of estrays:

To justices of the peace for issuing any warrant of appraisement, fifty cents.

For filing and entering in docket the sworn report of appraisers, fifty cents.

Taking and entering the affidavit of the taking up of any estray, fifty cents.

For posting notices of estray, and certifying copy of the sworn reports of the appraisers to the register of deeds, fifty cents.

Posting notices and selling an estray, two dollars.

Advertising estray, if published in a newspaper, three dollars.

To each appraiser, twenty-five cents.

To register of deeds, for entering certified copy of sworn report of appraisers, twenty-five cents, and for each inspection of the estray registry, ten cents.

MISCELLANEOUS PROVISIONS.

§ 29. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day.

§ 30. Officers authorized by law to take and certify acknowledgments of deeds and other instruments, are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents.

§ 31. In all actions, motions and proceedings in the supreme, district, probate or justices courts, the costs of the parties shall be taxed and entered on record separately.

§ 32. The clerk of the supreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds, may in all cases require the party for whom any service is to be rendered, to pay the fees in advance of the rendition of such service, or give security for the same, to be approved by the officer.

§ 38. All officers whose fees are by this chapter determined, are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said office; and if any such officer shall neglect to keep a table of fees of his office, as aforesaid, such officer shall, for such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed.

§ 34. It shall be the duty of the district court, at each term of court, to appoint a competent number of bailiffs to wait on the grand jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

§ 35. Every officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in form following:

I, A. B., do solemnly swear, or affirm, that I have been .... days necessarily and diligently engaged in the duties of my office as (insert title of office.)

[Officer's name.]

Any disbursing officer of this territory who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is taken and subscribed, shall forfeit to this territory the sum of fifty dollars, which forfeiture may be sued for by any tax-payer.

Approved February 17, 1877.

FEES OF CHAPLAINS.

CHAPTERXLIV, Laws of 1874-5. An Act to Establish the Fees of Chaplains.

§ 1. *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the fees for chaplains elected by the council and house of representatives, shall be two dollars ($2.00) per day for services rendered during the session of the legislative assembly. Said fees shall be paid out of any moneys in the territorial treasury not otherwise appropriated.

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, December 30, 1874.

CHAPTER 40.

PUBLIC EDUCATION.

§ 1. GOVERNOR APPOINTS SUPERINTENDENT.] There shall at each biennial session of the legislative assembly be nominated by the governor, and by and with the consent of the council, be appointed a superintendent of public instruction, who shall hold his office for two years, or until his successor is appointed and qualified: *Provided*, That when any vacancy occurs in said office by death, resignation, or otherwise, the governor shall appoint some suitable person to perform the duties of the office for the remainder of the unexpired term.

§ 2. OATH AND BOND.] The superintendent of public instruction shall, before entering upon the discharge of the duties of his office, take and subscribe to an oath to support the constitution of the United States and the organic act of this territory, and to faithfully discharge the duties of his office, which oath shall be filed with the secretary of the territory, and shall execute a bond in the penal sum of one thousand dollars, with two sureties, to be approved by the govornor, conditioned on the faithful performance of his duties and integrity in his accounts; which bond shall be filed with the secretary of the territory.

§ 3. VARIOUS DUTIES OF SUPERINTENDENT.] It shall be the duty of the superintendent of public instruction to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interests of education in the territory. And to this end he shall visit schools, confer with county superintendents. and hold institutes in company with them, and furnish them blank forms for collecting statistics of the various schools in the territory. He shall prepare and present to the governor before the fifteenth day of December in each year, a report of his official acts for the preceding year, with a full statement of the condition of the common schools in the territory, and the expenditure of the public school money, and shall make such suggestions for the improvement and support of common schools as he shall deem proper.

§ 4. CERTIFICATES TO TEACHERS.] The superintendent of public instruction shall also have power to grant certificates of qualification to teachers of proper learning and ability, to teach in any public school in the territory. which certificate shall be a professional certificate; and to regulate the grade of county certificates, which shall be first, second, and third grade certificates, and the superintendent of public instruction may, at his discretion, appoint and authorize a deputy to perform the duties of the office.

§ 5. SUPERINTENDENT'S COMPENSATION.] The compensation of the superintendent of public instruction for his services, shall be the sum of six hundred dollars per annum, and necessary mileage, not to exceed two hundred dollars per annum, and the expense of procuring blanks, postage, stationery, and such books as are necessary for the use of his office, and publication of his annual report; all of which allowance shall be paid by the territorial treasurer on the certificate of the territorial auditor, and said auditor shall grant such certificate on the account of said superintendent of public instruction, sworn to by him.

§ 6. SCHOOL BOOKS, LIBRARIES, REPORTS.] The superintendent of public instruction shall discourage the use of sectarian books and sectarian instruction in the schools; to advise in the selection of books for the school district libraries, and to open such correspondence abroad as may enable him to obtain, so far as practicable, information relative to the system of common schools and their improvements in other states and countries. He shall examine and determine all appeals duly made to him from the decision of any county superintendent in forming or altering any school district or concerning any other matter under the school law of this territory, and his decision shall be final. He shall prepare for the use of common school officers, suitable forms for making reports and conducting all necessary proceedings, and he shall cause the laws relating to common schools with the rules, regulations and forms aforesaid, and such instructions as he shall deem necessary to be printed, together with a suitable index, in pamphlet form, at the expense of the territory. He shall prepare a sufficient number of his annual report to be distributed as follows: One copy to each member of the legislature; one copy to each county superintendent of schools; one copy to each district officer, and to such other of the county and territorial officers as may be by him deemed proper, not to exceed fifteen hundred copies in one year. The superintendent of public instruction with the county superintendent and district school officers, may decide what text books shall be used in the schools: *Provided, however*, That after the adoption of a series of text books by the officers of any school district, and county superintendent, with the approval of the superintendent of public instruction, the same cannot be changed for the space of three years.

§ 7. TERRITORIAL INSTITUTE.] The territorial superintendent of public instruction, with the several county superintendents, shall hold annually, at some convenient place, a territorial teachers institute for the instruction and advancement of teachers; said institute not to continue less than four days and not to exceed ten days, which institute shall be free to all teachers and those preparing to teach in this territory.

§ 8. COUNTY SUPERINTENDENT.] The several counties of this territory shall at the same time and in the same manner as other county officers are elected, elect a suitable person to be superintendent of public schools within such county, who shall hold his office for two years from the first of

January next succeeding his election, unless he shall be elected to fill a vacancy, in which case he may immediately qualify into office, and shall hold his office until his successor is elected and qualified, and who shall receive three dollars for each day spent in the discharge of his official duties, and he shall be allowed a reasonable amount for necessary stationery, and every superintendent of schools shall make out in detail his account for official services, stating date and time spent, as well as the kind of service rendered, and make oath or affirmation to the correctness of the same before any officers authorized by law to administer an oath in the county in which he resides, which oath or affirmation shall be certified by said officer before such superintendent's account shall be presented to the county commissioners for allowance, who shall audit and allow the account, and the same shall be paid out of the county fund the same as other county officers, upon the order of the county commissioners: *Provided, however,* That no order shall be drawn to any superintendent until he shall have filed with the county clerk, the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section twenty of this act.

§ 9. COUNTY SUPERINTENDENT—HOW QUALIFY.] The county superintendent of public schools shall have charge of the common school interests of the county. He shall, before he enters upon the discharge of the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States, and the act organizing this territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the county clerk's office. He shall also execute a bond with approved security, payable to the board of county commissioners for the use of common schools in said county, in the penal sum of five hundred dollars; said bond must be approved by the county commissioners, and filed in the county clerk's office.

§ 10. DISTRICTING THE COUNTY.] That it shall be the duty of the county superintendent of schools, in addition to other duties required of him, to divide his county into school districts, subdivide and rearrange the boundaries of the same, when petitioned by a majority of the citizens residing in the district or districts to be affected by said change, and to furnish the county commissioners of such county with a written description of the boundaries of each district, which description must be filed in the register of deeds office, before such district shall be entitled to proceed with its organization by the election of school district officers, and it shall be his duty to keep on file in his office all petitions and remonstrances, which shall show the date of reception and the action had thereon; and it shall be his further duty, on the division of or change of district boundaries, to notify the clerk of the districts interested of the change made. Whenever it shall be deemed necessary to form a district from parts of two or more counties, it shall be the duty of the county superintendent of each county in which any part of the proposed joint district shall be situated to unite in laying out such joint district; and each county superintendent assisting, shall file a description of said joint district in the county clerk's office of his county.

§ 11. TREASURER'S MONEY STATEMENT.] It shall be the duty of the county treasurer, on the first Monday in January and July in each year, to furnish the county superintendent of public schools with a statement of the amount of money in the county treasury, belonging to the school fund, and he shall pay the same, upon the order of said superintendent, to the district treasurers.

§ 12. APPORTIONMENT OF MONEY—LIMITATION.] It shall be the duty of the county superintendent of public schools on the second Monday of January and July in each year, or as soon thereafter as he shall receive the statement of the county treasurer provided for in section 11, to apportion such amount to the several districts or parts of districts within the county, in proportion to the number of children residing in each, over the age of five and under twenty-one years of age, as the same shall appear from the last annual reports of the clerks of the respective districts, and shall immediately notify, by mail or otherwise, the district treasurer of each district, the amount of money due to his district, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned for each district: *Provided*, No district shall be entitled to receive any portion of the common school fund which shall not have held a school meeting at the time appointed by law for holding annual school meetings in this territory, or within thirty days thereafter, and made out and forwarded to the county superintendent of public instruction, their annual report within forty days of the time fixed by law for holding annual school meetings in this territory, and which shall not have had three months school during the previous year, except new districts, which shall receive one year's apportionment without complying with this provision.

§ 13. SCHOOL VISITATION—ADVICE—ACCOUNTS.] It shall be the duty of the superintendent to visit such common schools within their respective counties as shall be organized, according to law, at least once in each year, or oftener if they shall deem it necessary. At such visitation, the superintendent shall examine into the state and condition of such schools as respects the progress in learning and the order and government of schools; and they may give advice to the teacher of such schools as to the government thereof, and the course of study to be pursued therein, and shall adopt all requisite measures for the inspection, examination and regulation of the schools, and for the improvement of the schools in learning. Every superintendent of public schools shall also make out his account for official services in the manner hereinbefore required, and deliver a copy of the same to the county commissioners of the county in which such superintendent was elected or appointed on or before the first day of the annual session in January in each year, and the same shall be filed in the office of the register of deeds.

§ 14. DISTRICT REPORTS—APPEALS.] He shall see that the several reports of the clerks of the several school districts are made correctly and in due time, and shall hear and determine all appeals from the decision of district boards.

§ 15. PUBLIC EXAMINATION OF TEACHERS—CERTIFICATES—FEE.] He shall hold public examination of all persons offering themselves as teachers of common schools at the county seat of his county, on the last Tuesday of April and October of each year, notice of which shall be given publicly as possible, at which time he shall grant certificates for not less than three months, or more than one year to such persons as he shall find qualified as to moral character, learning and ability, and any person receiving such certificate shall be deemed a qualified teacher within the meaning of this act. Persons applying to the county superintendent for a certificate at any other time than at the public examination, shall pay to the said superintendent the sum of one dollar for his services.

§ 16. NEW DISTRICT—MEETING—JOINT DISTRICT.] Whenver a school district shall be formed in any county, the county superintendent of schools of such county shall, within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice thus prepared to be posted in at least five public places in the district, at least ten days before the time appointed for such meeting; and when a joint district is formed from portions of two or more counties, the county superintendents of each county from which any portion of the new district is taken, shall unite in giving the customary notices, and the new district shall be numbered by the superintendent of the county having the highest number of districts. Any citizen aggrieved by the action of the county superintendent of schools, in the formation of the school district in which he resides, shall have the right to appeal from his decision to the board of county commissioners, if such appeal be taken within sixty days from the time of the formation or change of said school district.

§ 17. RECORDS TO BE DELIVERED] The county superintendent of public schools shall perform all other duties of said office that now are or may hereafter be prescribed by law: and he shall deliver to his successor, within ten days after the expiration of his term of office, all the books appertaining to his office.

§ 18. VACANCY FILLED.] If a vacancy occur in the office of county superintendent of public schools by death, resignation or otherwise, notice thereof shall be given by the register of deeds to the county commissioners, who shall, as soon as practicable, appoint some suitable person to fill the vacancy, and the person receiving such appointment, shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the county clerk's office, as hereinbefore provided, and shall discharge all the duties of the office of county superintendent of public schools until a succsssor is elected and qualified. He shall give a like bond to that required by this act to be given by the county superintendent of schools.

§ 19. REPORT TO TERRITORIAL SUPERINTENDENT.] The county superintendent shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth days of November of each year, of the number of children between the ages of five and twenty-one in the school district within their respective counties; also the number of qualified teachers employed; the length of time each district school has been taught during the year, the kind of text books used, and the amounts expended; the amounts raised in each county and district by taxation or otherwise for educational interests, and any other items that may be of service to the superintendent of public instruction in preparing his annual report The district clerk shall report to the county superintendent the name of the school district officers, with their postoffice address.

SCHOOL DISTRICT MEETINGS.

§ 20. POWERS OF MEETING.] The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

1. To appoint a chairman to preside at said meeting in the absence of the director.

2. To adjourn from time to time: *Provided however*, That no annual meeting shall be adjourned for more than thirty days.

3. To choose a director, clerk and treasurer, who shall possess the qualifications of voters as prescribed in the next section of this act at the first and each annual meeting thereafter.

4. To designate by vote a site for a district school house.

5. To vote a tax annually not exceeding two per cent. on the taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site, and to build, hire or purchase a school house, and to keep the same in repair.

6. To vote a district tax annually, not exceeding two per cent. on the taxable property of the district for pay of teachers' wages in the district, and necessary fuel and other school expenses.

7. To authorize and direct the sale of any school house site or property belonging to the district when the same shall no longer be needful for the district.

8. To vote such a tax as may be necessary to furnish the school house with blackboards, outline maps, stoves, furniture, and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred: *Provided*, That said tax shall not exceed one per cent. in any year, and may be applied to any other purpose by a vote of the district at any regularly called meeting.

9. To give such direction and make such provision as may be deemed necessary in relation to the prosecution or defense of any suit or proceeding in which the district may be a party.

10. To alter or repeal their proceedings from time to time, as occasion may require, and to do any other business contemplated in this act.

11. To vote a tax not exceeding twenty-five dollars ($25.00) in any one year, to procure a district library, consisting of such books as they may direct any person to procure.

§ 21. WHAT PERSONS MAY VOTE.] The following persons shall be entitled to vote at any district meeting: All persons possessing the qualifications of electors as defined by the laws of the territory, and who shall be actual residents of the district at the time of offering to vote at such election.

§ 22. PROCEEDINGS IF CHALLENGED.] If any person offering to vote at a school district meeting be challenged as unqualified, by any legal voter, the chairman presiding shall declare to the person challenged the qualifications of a voter, and if such challenge be not withdrawn, the chairman, who is hereby authorized, shall tender to the person offering to vote the following oath or affirmation:

You do solemnly swear, or affirm, that you are an actual resident of this district, and that you are qualified by law to vote at this meeting.

Any person taking such oath or affirmation, shall be entitled to vote on all questions voted upon at such meeting.

ORGANIZATION OF DISTRICTS.

§ 23. WHEN DEEMED ORGANIZED.] Every school district shall be deemed duly organized when the officers constituting the district board shall be elected and qualified. Every person duly elected to the office of director, clerk or treasurer of any school district, who shall refuse or neglect, without sufficient cause, to accept of such office and serve therein, or who having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of ten dollars to the school district fund.

§ 24. WHAT OFFICERS ELECTED—TERMS.] The officers of each school district shall be director, clerk and treasuer, who shall be qualified voters of the district, one of whom shall be elected at each annual school meeting, to serve for three years, and until his successor is elected and qualified: *Provided*, That at the next annual school meeting after the passage of this act, and at meetings called to organize new districts, the director shall be elected to serve for one year, the clerk for two years and the treasurer for three years.

§ 25. SCHOOL DISTRICT BODY CORPORATE.] Every school district organized in pursuance of this act shall be a body corporate, and shall possess the usual powers of corporation for public purposes, by the name and style of school district No.... [such number as may be designated by the county superintendent] .... county, [the name of the county in which the district is situated] territory of Dakota, and in that name may sue and be sued, and capable of contracting and being contracted with, and hold such real and personal estate as it may come in possession of by will or otherwise, or is authorized to be purchased by the provisions of this act.

§ 26. TIME FOR ANNUAL SCHOOL MEETING—SPECIAL MEETING.] An annual school meeting for each district shall be held at the school house or at the place usually occupied for school purposes, or at some central place in the district, on the first Tuesday in April, at such hour as the district board may direct. Annual school meetings shall be called by the district clerk ten days previous to the time of such meeting, who shall post three notices of the time and place of holding such meeting. But if the district clerk shall neglect or refuse to notify the annual school meeting, a special meeting may be called as provided in section twenty-seven, at which time it shall be lawful to elect school district officers and transact any other business usually done at the annual school meetings. Special school meetings may be held at any time by the order of a majority of the district board, for which ten days' notice shall be given by the district clerk, said notice stating the business to be acted upon by said meeting. Special school meetings may also be held at the call of any five legal voters of the district, who shall subscribe and post three notices in public places in the district ten days previous to the call of the meeting, said notices to specify the business to be acted upon by said school meeting.

§ 27. IF ANNUAL MEETING PASSED.] Whenever the time for holding the annual meeting in any district shall pass without such meeting being held, the clerk, or in his absence, any member of the district board, within twenty days after the time for holding said annual meeting shall have passed, may give notice of a special meeting by putting up written notices thereof in three public places within the district, at least ten days previous to the time of meeting. But if said meeting shall not be notified within thirty days aforesaid, the county superintendent may give notice of such meeting in the manner provided for forming new districts, and the officers chosen at such special meeting shall hold their respective offices until the next annual meeting, and until their successors are elected and qualified.

§ 28. POWERS OF VOTERS AT DISTRICT MEETING.] The qualified voters at each annual meeting, or at any special meeting duly called, may determine the length of time a school shall be taught in their district for the ensuing year, and whether the school money to which the district may be entitled shall be applied to the support of the summer or winter term of school, or a certain portion to each; but if such matters shall not be determined at the annual or special meeting, it shall be the duty of the district board o determine the same.

§ 29. DUTIES OF THE DIRECTOR.] The director of each district shall preside at the district meetings, and shall sign orders drawn by the clerk, authorized by the district meeting, or by the district board, upon the treasurer of the district for moneys collected or received by him to be disbursed therein. He shall appear for and in behalf of the district in all suits brought by or against the district, unless other direction shall be given by the voters of such district at a district meeting.

DISTRICT CLERK.

§ 30. *DUTIES OF THE CLERK.*] The clerk of each district shall record the preceedings of his district in a book provided by the district for that purpose, and enter therein copies of all the reports made by him to the county superintendent, and he shall keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

§ 31. WHEN CLERK APPOINTED PRO TEM.] The said clerk shall be clerk of all district meetings; but if said clerk shall not be present, or being present, shall refuse to act at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

§ 32. Clerk to post notices of meetings.] It shall be the duty of the clerk to give at least ten days notice previous to any annual or special district meeting by posting up notices thereof at three or more public places in the district, one of which notices shall be affixed to the outer door of the school house, if there be one in the district; and said clerk shall give the like notice of every adjourned meeting, when such meeting shall have adjourned for a longer period than one month. Every notice for a special district meeting shall specify the object for which such meeting is called.

§ 33. Clerk's orders on treasurer] The clerk of the district shall draw orders on the treasurer of the district for moneys in the hands of such treasurer, which have been appropriated to or raised by the district to be applied to the payment of teacher's wages, and apply such money to the payment of teacher's wages, as shall have been employed by the board, and the clerk shall draw orders on the said treasurer for moneys in the hands of such treasurer to be disbursed for any other purpose ordered by a district meeting, or by a district board agreeable to the provisions of this act.

§ 34. Clerk to notify county clerk of tax.] It shall be the duty of the district clerk on or before the first day of May in each year, to notify the county clerk of the amount of tax, if any voted at the last annual meeting, and of any tax levied by the district board to pay judgment, of which notice has not been previously given, which notice shall be substantially in the following form:

District clerk's office, school district No.......of........county, Dakota Territory.

.........................187

To the county clerk of.... ...county, Dakota Territory:

I hereby notify you that at a district meeting of district No.......held on the........day of........187..at............the district voted the following tax:

For school house fund ....———mills.
For teacher's fund....................———mills.
For contingent fund.................———mills.

Total.... ... .———mills.

On the dollar of valuation of real and personal property for school purposes for the coming year, and you are hereby ordered to enter such tax on the county tax list for collection on the property in this district.

§ 35. Report of district clerk—contents] The clerk of each district shall, on or before the first day of April in each year, make out and transmit a report in writing to the county superintendent of public schools for each county in which part of his district may lie, showing,

1. The number of children, male and female, designating each separately, residing in the district or parts of districts on the last day of March previous to the date of such report, over the age of five and under twenty-one years.

2. The number and sex of children attending school during the year, and branches studied.

3. The length of time a school has been taught in the district by a qualified teacher; the name of the teacher; the length of time, and the wages paid.

4. The amount of money raised by the district, and the purpose for which it was levied, also the amount received from the apportionment of county fund, and the manner in which the same has been applied.

5. The amount of taxes levied, and now in the hands of the county treasurer for collection; also the amount of outstanding or unpaid orders on each fund, if any.

6. The kind of text books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

7. The names of school district officers, and the time their term of office expires.

§ 36. CLERK TO KEEP REPORTS.] It shall be his duty to keep a correct copy of all reports made, and turn them over to his successor; also of all orders drawn on the treasurer, and record the treasurer's reports in his records of proceedings.

DISTRICT TREASURER.

§ 37. BOND OF TREASURER.] The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer of the district, in any one year, with sufficient securities, to be approved by the director and clerk, (who may at any time require new or additional bond, and shall require new bonds whenever the amount of money to come into his hands shall be equal to the amount of bond, or upon the failure, death or removal from the county of any bondsman, or other sufficient reason) conditioned upon the faithful discharge of the duties of said office. Such bond shall be filed with the district clerk, and in case of the breach of any condition thereof the director shall cause a suit to be commenced thereon in the name of the district, and the money collected shall be applied by such director to the use of the district as the same should have been applied by the treasurer, and if such director shall neglect or refuse to prosecute, then any householder of the district may cause such prosecution to be instituted; and the necessary expenses thereof in any case arising under this section, unless otherwise ordered by the court, shall be paid out of the contingent fund.

§ 38. BREACH OF BOND.] If the treasurer shall fail to give bonds as required in this act, or from sickness or from any other cause shall be unable to attend to his duties, said office shall be deemed vacant.

§ 39. COUNTY TREASURER TO PAY OVER SCHOOL FUND.] The treasurer of each district shall apply for, and the county treasurer shall pay over to th [illegible]-trict treasurers all of the school moneys collected for his district u[illegible] order of the director and clerk of the district, on hand the f[illegible] in October, January, April and July of each yea[illegible] school fund upon the order of the county superintendent; and the [illegible] treasurer shall pay over, on the order of the clerk, signed by the [illegible]tor of such district, out of the moneys in his hands belonging to the funds drawn upon.

§ 40. WHEN DISTRICT TREASURER REFUSES TO PAY.] If any district treasurer shall refuse or neglect to pay over any money in the hands of such treasurer belonging to the district, it shall be the duty of his successor in office to prosecute without delay the official bond of such treasurer for the recovery of such money.

§ 41. IN CASE OF LOSS.] If by neglect of any treasurer, any school money shall be lost to any school district which has been received from the county treasurer, said treasurer shall forfeit to such district the full amount of money so lost.

§ 42. STATEMENT OF DISTRICT TREASURER.] The treasurer shall present to the district at each annual meeting, a report in writing containing a statement of all moneys received by him from the county treasurer during the year, from assessments in the district and apportionment, and the disbursements made, and exhibit the vouchers therefor, which report shall be recorded by the clerk; and if it shall appear at the expiration of his term of office that any balance of money is in his hands at the time of making such report he shall immediately pay such balance to his successor.

DISTRICT BOARD.

§ 43. DISTRICT BOARD BUY OR SELL SCHOOL HOUSE—OTHER DUTIES.] The district board shall purchase or lease such site for a school house as shall have been designated by voters at a district meeting in the corporate name thereof, and shall build, hire or purchase such school house as the voters of the district in a district meeting shall have agreed upon, out of the funds provided for that purpose, and make sale of any school house, site or other property of the district, and, if necessary, execute a conveyance of the same in the name of their office when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

§ 44. HAVE CARE OF SCHOOL PROPERTY—APPOINT LIBRARIAN.] The district board shall have the care and keeping of the school house and other property belonging to the district. They shall have power to make such rules and regulations relating to the district library as they may deem proper, and to appoint some suitable person as librarian, and to take charge of the school apparatus belonging to the district.

§ 45. SCHOLARS FROM OTHER DISTRICTS—FEES, HOW PAID.] The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct, and when scholars are admitted from other districts, the district board may, in their discretion, require a tuition fee from such scholars; or they shall have power to send scholars from their district to any other school within a reasonable distance, and pay a tuition fee therefor, or they may send only advanced scholars to a graded or high school outside of the district, paying tuition fee therefor; and in the collection of taxes and distribution of school money, have the same effect and be the same as though there was a school and teacher kept in the district for as many months as scholars attend other schools, and the tuition shall be paid out of the teachers' fund.

§ 46. DISTRICT BOARD HIRE TEACHERS.] The district board shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month, as agreed upon by the parties; and such contract shall be filed in the district clerk's office.

§ 47. PROVIDE NECESSARY APPENDAGES OF SCHOOL HOUSE.] The district board shall provide the necessary appendages for the school house during the time school is taught therein; and the bills for the same shall be presented and allowed (if reasonable,) at any regular district meeting.

§ 48. SCHOOLS FREE TO ALL CHILDREN.] The district schools established under the provisions of this act, shall be at all times equally free and accessible to all children under the age of twenty-one years and over five years of age, residents of the district, subject to such regulations as the district board in each may prescribe.

§ 49. BRANCHES TO BE TAUGHT.] In every school district there shall be taught orthography, reading, writing, English grammar, geography, and arithmetic, if desired, during the time the school shall be kept, and such other branches of education as may be determined by the district board.

§ 50. SPECIAL MEETING ELECT IN CASE OF VACANCY.] If a vacancy should occur in the district board in any district, the remaining member or members of the board shall, within thirty days, call a special district meeting to elect a new member or members of the board, to serve until the next annual meeting, at which time a new member or members of the board shall be elected to fill vacancy for the unexpired term.

REVENUE.

§ 51. COUNTY CLERK TO LEVY POLL AND OTHER TAX.] It shall be the duty of the county clerk of each county, at the time of making the annual assessment, to levy a tax of one dollar on each elector in the county for the support of district schools, and a further tax of three mills on the dollar upon the taxable property of the county, to be applied to the same purpose, to be collected at the same time and in the same manner as prescribed by law for the collection of taxes, which taxes, when collected, shall be distributed to the several school districts in proportion to the number of children over five and under twenty-one years of age therein, and shall be drawn from the county treasury upon the order of the superintendent of schools of the county.

§ 52. DUTIES OF CLERK IN RELATION TO TAXES FOR SCHOOLS.] It shall be the duty of the county clerk, and it is hereby made his duty to make out and charge up to each description of real estate and on all personal property in his county the district school taxes as he is notified has been voted by the district in which it is situated, in the same manner as the county and territorial tax list is prepared, and deliver it to the county treasurer at the same time.

§ 53. COUNTY TREASURER TO COLLECT SCHOOL TAXES.] And it shall be the duty of the county treasurer, and it is hereby made his duty, to collect the taxes for school purposes at the same time and in the same manner as the county and territorial tax is collected, and full power is hereby given him to sell the property, or any property for school taxes, the same as is now by law provided for other taxes; and he shall execute a tax deed on tax sales made for school district taxes, the same as is provided in the case of other taxes, and receive the same fees as is provided in the case of other taxes.

§ 54. MONEYS COLLECTED BY COUNTY TREASURER.] The county treasurer shall collect all moneys due the county for school purposes from fines, forfeitures, or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurers as prescribed by this act. He shall collect all delinquent school taxes, as by law provided for other taxes, and he shall pay the same over to the treasurer of the district entitled thereto, less his fees and cost of collecting; and if any county treasurer shall refuse to deliver over to the order of the superintendent any money in his possession, or shall use, or permit to be used, for any other purposes than are specified in this act, any school money in his possession, he shall, on conviction thereof be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

§ 55. MONEY IMPROPERLY COLLECTED REFUNDED.] Whenever an error may be discovered in any district tax list, the district board may order any money which may have been improperly collected on such tax list to be refunded.

§ 56. CITY AND TOWN SCHOOLS SHARE.] The public schools of any city, town or village which may be regulated by special law set forth in the charter of such city, town or village, shall be entitled to receive their proportion of the public fund: *Provided*, That the clerk of the board of education in such city or village shall make due report within the time and manner prescribed in this act to the superintendent of schools.

MISCELLANEOUS.

§ 57. TEACHERS REPORT AT END OF TERM.] It shall be the duty of the teacher of every district school or graded school, to make out and file with the district clerk, at the expiration of each term of school, a full report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the text books used, the branches taught, and the number of pupils engaged in the study of said branches. And teachers who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board.

§ 58. PENALTY FOR FALSE REPORT.] Every clerk of a district board who shall willfully sign a false report to the county superintendent of his county shall be deemed guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

§ 59. PENALTY FOR REFUSAL TO DELIVER BOOKS TO SUCCESSOR.] Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office all records and books belonging severally to their offices shall be subject to a fine not exceeding five dollars.

§ 60. TAXES TO PAY JUDGMENT.] Whenever any final judgment shall be obtained against any school district, the district board shall levy a tax on the taxable property in the district for the payment thereof; such tax shall be collected as other school district taxes, but no execution shall issue against any school district.

§ 61. JURISDICTION OF JUSTICES OF PEACE.] Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the right to appeal as in other cases.

§ 62. COMPENSATION OF SCHOOL DISTRICT OFFICERS.] No school district officer mentioned in this act shall receive any compensation for his services out of the territorial or county school fund, but a regularly convened district meeting may by vote allow the district board such compensation as they shall deem proper.

§ 63. PENALTY FOR REFUSING TO SERVE.] Any person duly elected at the annual district school meeting to either of the district offices mentioned in this act, who shall omit or refuse to serve as such officer without substantial cause, shall forfeit the sum of ten dollars for such omission or refusal, which amount may be recovered by the district in civil action before any justice of the peace in the county where such district is located, and shall be appropriated to the support of schools in his district by whom such action was prosecuted.

§ 64. COURTS TO COLLECT CERTAIN FINES.] All fines and penalties not otherwise provided for in this act shall be collected by action in any court of competent jurisdiction.

§ 65. DISPOSITION OF MONEY DONATED.] Whenever any sum of money shall be paid into the county treasury by any educational aid society or benevolent person or persons for the cause of education, the county treasurer shall issue to such society or person a certificate of deposit stating the amount of money received, from what source, and for what source, and for what purpose the same is applied, whether to the payment of teachers wages, the building or leasing of school houses, or the purchase of a site of land, and the particular school district or districts to which the said money is donated; and the said educational fund may thereafter be drawn from the county treasurer by order of the county superintendent of schools and applied by the district board of the proper district to the object specified in the certificate of donation. And the county superintendent of public schools shall make a statement of the expenditure of said fund in his annual report.

§ 66. TEACHERS' INSTITUTES—APPROPRIATION.] The territorial superintendent of public instruction, in connection with the county superintendent of each county, shall annually hold a session of the teachers' institute, of not more than ten days in length, and the sum of one hundred dollars is hereby appropriated from any funds in the territorial treasury not otherwise appropriated, for the purpose of employing experienced teachers to assist in conducting the same, and defraying other expenses; the several county superintendents are hereby required to aid in conducting the said institute.

§ 67. SPECIAL COUNTY INSTITUTES.] The superintendent of public instruction shall each year, upon the request of any county superintendent, accompanied by a petition signed by not less than ten teachers residing in his county, appoint a county teachers institute, which shall continue in session not less than one week, and not more than four weeks: *Provided, however*, Any two or more county superintendents may join in requesting the superintendent of public instruction to appoint a county institute in one of the counties represented by them, by forwarding with such request a petition signed by not less than ten teachers residing in said counties. And the sum of fifty dollars is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, for the purpose of defraying the expenses of each county institute held under the provisions of this section. And the territorial auditor shall issue a certificate to the amount of fifty dollars upon the certificate of the superintendent of public instruction, that any county superintendent or county superintendents have made the required application for such county institute; and it may be required by county superintendents of teachers applying for certificates to teach, that they shall attend the sessions of the county institute, unless prevented by sickness or some unavoidable occurrence.

§ 68. CERTIFICATE OF VALUATION.] It shall be the duty of all county or township assessors to furnish to the school district clerks within their respective counties or townships, at least three days before the annual school meeting, a certificate of the total valuation of all taxable property, real and personal, within each school district respectively.

§ 69. OUTLINE DISTRICT MAPS.] It shall be the duty of the county superintendent to furnish the county or township assessors with an outline map showing the boundaries of the school districts, in time for the provisions of the preceding section.

FORMS.

§ 70. The form of notice of the first district school meeting, may be substantially as follows:

To......................a house holder in school district number....................

The county superintendent has formed school district number..............in the county of ....of which the following is a description................and you are hereby directed to post this notice in at least five public places in said district, notifying the voters of said district to attend the first meeting thereof, which is appointed to be held at the house of..................in said district on the...............day of............18 ..at ....o'clock........

....

County Superintendent of Public Instruction.

This...........day of.......... ...18....

§ 71. The form of notice for annual district meeting may be as follows:

Notice is hereby given to the voters of school district number................of...........
county, that the annual meeting of said district will be held at...............on...........
day of............18....at..............o'clock ...
This..............day of...........18..

....
District Clerk.

§ 72. The form of order on the district treasurer may be as follows:

To..............................treasurer of school district number...............of the
county of......................................
Pay to the order of................the sum of.................dollars for.............
out of any money in your hands belonging to the.........................fund not otherwise
appropriated, belonging to said district.

.........................District Clerk.
.........................Director.

Dated at...................D. T., this..............day of.............18....

§ 73. The form of bond of district treasurer may read as follows:

Know all men by these presents, that we......................treasurer of school district
number...............county......................and..............................his
surety, are held and firmly bound unto school district No.....................in the sum of
...........................dollars, for the payment of which we bind ourselves severally
and jointly, our heirs, executors and administrators, firmly by these presents. Sealed with our
seals. Dated this...............day of.......................18....

The conditions of the above obligation is such that if said................................treasurer
as aforesaid, shall faithfully discharge the duties of his office as treasurer of school district
number...............county.....................as prescribed by law, then this obligation
to be void, otherwise to remain in full force.

Signed, sealed and delivered, in presence of

....
....

........................[SEAL.]
........................[SEAL.]
........................[SEAL.]

§ 74. Vouchers may be in the following form:

Received.....................18....of.........................treasurer of school district
number...................county of.................., ...dollars, for services
rendered as teacher in the said district, for the term of...............months.

...............................Teacher.

§ 75. The form of contracts between district and teacher may read as follows:

It is hereby agreed between school district number...............county of..............
and..............teacher, That the said.....................is to teach the common
school of said district for the term of..............months, for the sum of...............
dollars per...........commencing on the...............day of.............18....and
for such services properly rendered, the said school district is to pay.................the
amount that may be due according to this contract on or before the................day of
..............., 18....   ....District Board.
This..................day of.....................18....

..............................Teacher.

§ 76. The form of annual report of district treasurer may be substantially as follows:

I..........................treasurer of school district number.................county of
....................submit the following report of all moneys received and disbursed by me
since the last annual meeting:

Amount on hand last report.......................................$———
Amount received from county treasurer............................———
Total amount received..$———

Which has been placed to the credit of the following funds:

School house...$———
Teachers...———
Contingent...———

Paid out on orders of the district clerk and director on the following funds:
School house...$———
Teachers...———
Contingent...———
Total paid out...———
Balance on hand..———
Divided among the funds as follows:
School house...$———
Teachers...———
Contingent...———
This..................day of...................A. D. 18...
..................................Treasurer.

§ 77. The form of report of district clerk to the county superintendent of public instruction may read as follows:

.......................Dakota...............18....
To.......................county superintendent of schools for ....county, Dakota:
SIR:—The following is a correct report of the condition and statistics of school district number..............of..............................county, for the year ending August 31st, 187....
Number of children residing in district.................................} Males......———
between the ages of 5 and 21...} Females....———
Total..———
Number of pupils attending school during the year........(of these........} Males......———
resided in other districts)...} Females....———
Total..———
Number of months school has been taught during the year.............................———

Teacher's Names.	Wages.	No. of Months Taught.
....	$....	....
....	$....	....
....	$....	....

Amount of money received from county fund during year..........................$———
Amount of money raised on district tax..———
Amount of money on hand from last year..———
Total...$———
Amount paid for buildings and repairs...$———
Amount paid for furniture, library and apparatus....................................———
Amount paid for fuel and other expenses...———
Amount paid for teachers' wages...———
Total...$———
Balance in hand of treasurer..$———
Value of all school district property...———

TEXT BOOKS USED IN SCHOOL.

............Readers.
............Arithmetics.
............Grammars.
............Spellers.
............Geographies.
............Histories.

The last school meeting was held............18....at.........

Names of School Board.	Address.	Terms Expire.
...............Director.	....	.........18....
...............Clerk.	....	.........18....
...............Treasurer.	....	.........18....

Remarks.........................

....
District Clerk, School District No....of ....County.

To which should be added a copy of teachers' reports, giving the names, ages and total number of male and female pupils, number of days taught, the kind of text books used, the number of scholars in each branch of study, and the greatest number of miles to be traveled by scholars living on the border of the district.

The form of the clerk's notice to the county clerk may read as follows:

..................Dakota............18....
To...................county clerk of...........county, Dakota:
SIR:—At the last meeting of school district No....in the county of....held at....on the....day of....18....it was voted to collect the following rate of taxes, for the use of the district:
For the school house funds....mills on the dollar.
For the teacher's funds ....mills on the dollar.
For the contingent funds ....mills on the dollar.
Which you will carry out on the tax list for this district.
...................District Clerk. ....Director.

§ 78. A school teacher's certificate may be in the following form:

Dakota Territory................County........A. D. 18....

This is to certify that..............has been examined by me, and found competent to give instruction in reading, orthography, writing, arithmetic, English grammar, geography and......................and having exhibited satisfactory testimonials of good moral character, is authorized to teach these branches in any common school within this county.

....

Superintendent of Public Instruction ....County.

§ 79. Form of deed of school property may be as follows:

This indenture made the.......day of ....one thousand eight hundred and....between ....and................and ....his wife, of the county of............ Dakota Territory, parties of the first part, and ....of district board of district number............county and territory aforesaid, parties of the second part, witnesseth that the said parties of the first part, in consideration of........dollars to them in hand paid before the delivery thereof, have bargained and sold, and by these presents do grant and convey to the said parties of the second part, their successors in office and assigns forever (here describe the property) with the appurtenances and all the estate, title and interest of the said parties of the first part, do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof, the said parties of the first part were the lawful owners of the premises above granted and seized thereof in fee simple absolute, and they will warrant and defend the above granted premises in the peaceful possession of the said parties of the second part, their successors and assigns forever.

Sealed and delivered in presence of ....[SEAL.]
... .[SEAL.]

Territory of Dakota, }
..........County. }

Personally appeared before me, a.. ....within and for the county above named....... and..............his wife, to me known to be the persons whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed; and the said..............being at the same time by me made acquainted with the contents of the above deed apart from her husband, acknowledged that she executed the same voluntarily, and that she is still satisfied therewith.

Witness my hand and seal this........day of..............A. D. 18....

§ 80. REPEAL, EFFECT OF.] Chapter forty of the session laws of 1875, and all acts and parts of acts heretofore passed in relation to common schools, are hereby repealed: *Provided*, That such repeal shall not affect any rights or liabilities that have accrued under and by virtue of said act or acts: *And provided further*, That all officers that have been duly elected and qualified in accordance with the provisions of said act, shall continue to hold and discharge the duties of their respective offices until their successors are duly elected and qualified.

§ 81. IMMEDIATE EFFECT—LIMITATION.] This act shall take effect from and after its passage and approval: *Provided, however*, That nothing herein contained shall be construed so as to interfere in any manner with the provisions of an act passed at the recent session of the legislative assembly establishing a board of education for the city of Yankton, regulating the management of the public schools therein.

Approved, February 17, 1877.

CHAPTER 41.

PROTECTION OF BIRDS.

AN ACT for the Protection of Game.

§ 1. UNLAWFUL TO SELL] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That it shall be unlawful for any person or persons to kill, ensnare or trap in any form or manner, or by any device whatsoever, for the purpose of sale, trade or traffic, any quail, prairie chicken, grouse, plover, snipe or curlew, at any time

§ 2. UNLAWFUL TO KILL AT CERTAIN TIMES.] That it shall be unlawful for any person or persons to kill, ensnare or trap in any form or manner, or by any device whatsoever, any quail, prairie chicken, grouse, snipe, plover or curlew, between the first day of January and the fifteenth day of August in each and every year.

§ 3. UNLAWFUL TO KILL ON OTHERS PREMISES.] That it shall be unlawful for any person or persons to kill, ensnare or trap in any form or manner, or by any device whatsoever, any quail, prairie chicken, grouse, snipe, plover or curlew, or any premises owned or occupied by any other person or persons without the consent of such person or persons.

§ 4. PENALTY FOR VIOLATION.] Any person or persons who shall violate sections one, two or three of this act, and every person or corporation, or any employee thereof, who shall sell, expose for sale, or shall have in his or their possession or custody, with intent to sell, dispose of, or transport any quail, prairie chicken, grouse, snipe, plover or curlew, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined two dollars for each such quail, prairie chicken, grouse, snipe, plover or curlew so killed, destroyed, taken, sold, exposed for sale, or had in possession for transportation, together with costs of prosecution.

§ 5. REPEAL OF FORMER ACT.] Chapter 49 of the eleventh general assembly being "an act making it unlawful to kill quail during certain months," approved January 15th, 1875, is hereby repealed.

§ 6. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, February 16, 1877.

CHAPTER 42.

COUNTY BOUNDARIES AND ORGANIZATION.

AN ACT to define the boundaries of and name certain counties in the Territory of Dakota.

§ 1. CUSTER COUNTY DEFINED] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, That the county of Custer shall be bounded as follows: Commencing at the northwest corner of Forsythe county where the west fork of the Big Cheyenne river intersects the boundary line dividing the territory of Dakota and the territory of Wyoming; and running thence north along said boundary line to a point ten (10) miles south of the point where the forty-fourth parallel of north latitude intersects said boundary line; thence east in a direct line to the channel of the South Fork of the Big Cheyenne river; thence southwesterly along said channel of the South Fork of the Big Cheyenne and the northern boundary of the county of Forsythe to the place of beginning.

§ 2. PENNINGTON COUNTY.] That the county of Pennington shall be bounded and described as follows: Commencing at a point where the forty-fourth parallel of north latitude intersects the boundary line dividing the territory of Dakota and the territory of Wyoming; thence running north along said boundary line ten (10) miles; thence east in a direct line to the channel of the South Fork of the Big Cheyenne river; thence southerly along said channel of the South Fork to the point where the northern boundary line of Custer county intersects the said South Fork of the Big Cheyenne; thence west along the northern boundary of Custer county to the boundary line dividing the territory of Dakota and the territory of Wyoming; thence north along said boundary line ten (10) miles to the place of beginning.

§ 3. LAWRENCE COUNTY.] That the county of Lawrence shall be bounded and described as follows: Commencing at a point on the boundary line dividing the territory of Dakota and the territory of Wyoming, at the northwest corner of Pennington county; thence east along the northern boundary of Pennington county to its intersection with the channel of the South Fork of the Big Cheyenne; thence northerly along said South Fork to its confluence with the Belle Fourche river; thence running northwesterly along said Belle Fourche and East Fork of the Big Cheyenne river to the point where the said East Fork, or Red Water, intersects the boundary line dividing the territory of Dakota and the territory of Wyoming; thence south along said boundary line to the place of beginning.

§ 4. ZIEBACH COUNTY.] That all that part of the county of Pennington as laid down and described in section 6, chapter 29, laws of 1874 and 1875, as is not included within the metes and bounds, as described in section 2 of this act, be made a separate county, and the same to be called Ziebach county.

§ 5. BOUNDARIES MODIFIED.] The boundaries of the counties of Custer and Lawrence are hereby modified and corrected in accordance with the provisions of this act.

§ 6. GOVERNOR APPOINTS OFFICERS.] The governor is hereby authorized, and it is made his duty, when the country embraced within said counties herein described comes under the jurisdiction of this territory, or as soon as practicable, and he can obtain the necessary information after the passage and approval of this act, and without the petition of voters otherwise required, to appoint for each of said counties three county commissioners, who shall constitute the board of county commissioners, one register of deeds, one sheriff, one treasurer, one judge of the probate court, one district attorney, one coroner, one superintendent of public schools, and one assessor; and said officers, so appointed, shall hold their offices respectively until their successors shall be elected and qualified according to law.

§ 7. OFFICERS QUALIFY] Immediately after the appointment the said commissioners for each of said counties respectively shall meet at a place within their county, to be agreed upon, and elect one of their number chairman of the board, who shall immediately administer the oath of office to the other commissioners, and one of them shall then administer the like oath to him. The chairman shall then administer the oath of office to the judge of the probate court, and he is then authorized and required to administer the like oath to each of the other officers herein authorized to be appointed. Said oaths shall be in writing, and certified by the person or officer administering them, and must be filed in the office of the register of deeds for the county. Such officers must each thereafter, and as early as practicable give the bond as required by law, and shall immediately enter upon the discharge of their respective duties according to law.

§ 8. BOARDS APPOINT—SPECIAL ELECTION—TERMS] Said board of county commissioners for each county is hereby authorized to appoint all other officers authorized by law for said counties, except justices of the peace, and they shall qualify as required by law. The said boards shall also cause an election to be held in each of their counties respectively, upon notice to be posted in writing not less than twenty days before said election, in five public places in the county, for the election of four justices of the peace in each county, which election shall be held, and the returns thereof made, as provided by the election law of the territory; except that the returns must be made to the register of deeds within six days, and the canvass thereof within ten days after said election; and the justices of the peace so elected may qualify as provided by law, immediately, or as soon as practicable after their election, and shall enter upon their duties at once. Such justices shall hold their offices until their successors shall be elected at the general election in 1877, and shall qualify.

§ 9. QUORUM OF BOARD, CLERK AND RECORD.] Any two commissioners appointed as herein provided, shall constitute a quorum, and may perform all the acts required to all legal intents and purposes the same as if the three were present and acting; and the register of deeds so appointed shall be, ex-officio, county clerk, and act as such, and the said board of county commissioners must make a journal and preserve the official record of their proceedings from the first, according to law.

§ 10. EFFECT—OTHER LAWS APPLY.] This act shall take effect and be in force from and after its passage and approval, and it amends and modifies all acts and parts of acts inconsistent with its provisions, so far only as it is necessary to carry this act into effect, but all other such acts, except those bounding and defining counties herein defined, are in force, except so far as this act governs and takes the place of other law.

Approved, February 10, 1877.

AN ACT Changing the Boundaries of the County of Hamlin, creating the County of Codington, and for other purposes

§ 1. HAMLIN COUNTY DEFINED.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the boundaries of the county of Hamlin be and the same are hereby changed and modified, so that hereafter the said county of Hamlin shall be bounded as follows, to-wit: Beginning at the southwest corner of Duel county, thence north along the west line of said county of Duel to the northeast corner of township one hundred and fifteen, of range fifty-one; thence west along the line between townships one hundred and fifteen and one hundred and sixteen, to the northwest corner of township one hundred and fifteen, of range fifty-five; thence south along the line between ranges fifty-five and fifty-six to the north line of Wood county, thence east along the north line of the said county of Wood to the northwest corner of the county of Brookings, thence east along the north line of said county of Brookings to the place of beginning.

§ 2. CODINGTON COUNTY BOUNDED.] That all that district of county included within the following boundaries, to-wit: Beginning at the northeast corner of the county of Hamlin, as bounded in the last section; thence north along the line between ranges fifty and fifty-one, to the northeast corner of township one hundred and nineteen, of range fifty-one; thence west along the line between townships one hundred and nineteen and one hundred and twenty, crossing the Wahpeton and Sisseton Indian reservation in the same course, and continuing in same course to the northwest corner of township one hundred and nineteen, of range fifty-five; thence south along the line between ranges fifty-five and fifty-six, to the northwest corner of the said county of Hamlin; thence east along the north line of said county of Hamlin to the place of beginning, be and the same is hereby made and constituted the county of Codington.

§ 3. GRANT AND CLARKE COUNTIES MODIFIED.] The boundaries of the counties of Grant and Clarke are hereby changed and modified to conform with the provisions of this act.

§ 4. REPEAL.] All acts and parts of acts so far as they conflict with the provisions of this act, are hereby repealed.

§ 5. IMMEDIATE EFFECT.] That this act shall take effect and be in force from and after its passage and approval.

Approved, February 15, 1877.

CHAPTER 43.

PUBLICATION OF LAWS.

AN ACT making Appropriations for the purpose of publishing the Laws of Dakota Territory, passed at the twelfth session of the Legislative Assembly, and reimburse E A. Sherman for expenses incurred as a witness for attendance before the committee of Ways and Means.

§ 1. FIVE THOUSAND DOLLARS TO PRINT LAWS.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* There is hereby appropriated from any funds in the territorial treasury not otherwise appropriated, the sum of five thousand dollars, the same to be paid in territorial warrants at their par value, for the purpose of printing, indexing and binding, one thousand copies of the laws of the territory of Dakota passed at the twelfth session of the legislative assembly, and the printing of said laws shall be under the sole and exclusive management and control of the secretary of said territory, and any and all moneys which may be appropriated by congress for the purpose of printing said laws, shall be used for the purpose of reimbursing the territory, and shall be paid into the territorial treasury for such purpose and no other.

§ 2. WHAT LAWS TO BE PRINTED.] There shall only be published the general laws and public acts of the territory, passed at said twelfth session of the legislative assembly, after the same shall have been approved by the governor.

§ 3. WITNESS FEES REIMBURSED.] There is hereby appropriated from any funds in the territorial treasury, not otherwise appropriated, the sum of twenty dollars, to be paid by territorial warrants to E. A. Sherman, to reimburse him for expenses incurred as a witness before the ways and means committee, by order of the house of representatives.

§ 4. IMMEDIATE EFFECT.] This act shall take effect and be in force on and after its passage and approval.

Approved, February 17, 1877.

CHAPTER 44.

LEGALIZING ACTS OF TERRITORIAL OFFICERS.

AN ACT to Legalize the Official Acts of certain Territorial Officers therein Named.

§ 1. ACT OF ELECTED TERRITORIAL OFFICERS LEGALIZED.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the official acts of the persons who have from time to time, since the first organization of the territory, held the offices of territorial auditor, territorial treasurer, territorial superintendent of public instruction, territorial superintendent of immigration and territorial commissioner of immigration, by authority of election by the people, under any territorial laws, be and the same are hereby confirmed and legalized, and the same shall be deemed and held as valid and binding as though the said officers had been nominated by the governor, by and with the consent of the territorial council.

§ 2. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, February 13, 1877.

CHAPTER 45.

REPEAL OF RELIEF BOND ACT.

AN ACT relative to Territorial Bonds.

§ 1. GRASSHOPPER-BOND ACT REPEALED.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the act passed the 15th day of January, 1875, by the legislative assembly of the territory of Dakota, being chapter 24, entitled "an act to provide assistance and seed grain to those settlers in the territory who are needing aid by reason of a failure of crops," be and the same is hereby repealed.

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 24, 1877.

CHAPTER 46.

DEFINING JUDICIAL DISTRICTS.

AN ACT to Establish the Boundaries of the Judicial Districts of this Territory.

§ 1. FIRST DISTRICT BOUNDARIES.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* All that portion of the territory of Dakota west of the right bank of the Missouri river at low water mark, and south of the forty-sixth parallel of latitude, shall constitute the first judicial district.

§ 2. SECOND DISTRICT.] All that portion of this territory north of the forty-sixth parallel of latitude shall constitute the third judicial district.

§ 3. THIRD DISTRICT.] All that portion of this territory not embraced in the first and third judicial districts shall constitute the second judicial district.

§ 4. PENDING CASES.] All criminal cases in which the United States is a party shall be tried and disposed of in the court of the district in which they are now pending unless the place of trial shall be changed as provided by law.

§ 5. LOCATION OF COURT IN THIRD DISTRICT.] That the district court in and for the third judicial district shall be held at Bismarck in the county of Burleigh on the second Tuesday of April and third Tuesday of September of each year.

§ 6. LOCATION OF SECOND DISTRICT COURT.] The district court in and for the second judicial district shall be held at Yankton, in Yankton county, on the second Tuesday of March and November of each year.

§ 7. LOCATION OF FIRST DISTRICT COURT.] The district court in and for the first judicial district shall be held at the county seat of Pennington county on the first Tuesday of May and October of each year.

§ 8. UNITED STATES JURISDICTION.] The district courts mentioned in this act shall exercise the power appertaining to district and circuit courts of the United States for the several districts in which they are located.

§ 9. REPEAL OF ACTS.] Chapter 55, laws 1874-75, and all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 10. EFFECT ON CONTINGENCY.] This act shall take effect and be in force from and after its passage and approval, and the ratification by congress of the agreement with the Sioux Indians ceding the Black Hills.

Approved, February 15, 1877.

SUPPLEMENTAL ACT.

AN ACT supplemental to "An Act establishing the boundaries of the Judicial Districts of this Territory," passed at the Twelfth Legislative Session.

§ 1. PART OF BOREMAN COUNTY IN THE THIRD DISTRICT.] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, All that portion of the county of Boreman lying north of Grand river shall be embraced within, and it is hereby made a part of, the third judicial district.

§ 2. ADDITION TO SECOND DISTRICT.] The counties of Todd, Gregory, Lyman and Presho are attached to and made a part of the second judicial district.

§ 3. LOCATION OF FIRST DISTRICT COURT.] The district court within and for the first judicial district shall be held at the county seat of Pennington county, on the fourth Tuesday of May and the second Tuesday of September in each year.

§ 4. LOCATION OF THIRD DISTRICT COURT.] The district court within and for the third judicial district shall be held at Bismarck on the third Tuesday of April and the second Tuesday of October in each year.

§ 5. CERTAIN TERMS AUTHORIZED.] Nothing contained in this act, nor the one to which it is supplemental, shall be construed as to prevent the holding of the courts within and for the first and second judicial districts in February and April respectively of the present year, as provided for in chapters 55 and 56 of the session laws of 1874-5, but said terms shall be held as therein provided.

§ 6. CONSTRUCTION AND FORCE OF ACT.] This act shall be construed in connection with the act to establish the boundaries of the judicial districts of this territory passed at the present session, which is so far modified and amended as to allow this act to have full force and effect, and no further.

§ 7. EFFECT CONTINGENT.] This act shall take effect and be in force from and after its passage and approval by the governor, and the ratification by congress of the agreement with the Sioux Indians ceding the Black Hills.

Approved, February 17, 1877.

CHAPTER 47.

CONTESTS OF LEGISLATIVE ELECTIONS.

AN ACT to Regulate the Mode of Procedure in Cases of Contested Elections of Members of the Legislative Assembly.

§ 1. NOTICE OF CONTEST.] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, Whenever any person intends to contest an election of any member of the legislative assembly of the territory of Dakota, he may within ten days after the result of such election shall have been determined by the officers or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest.

§ 2. ANSWER OF NOTICE.] Any member upon whom the notice mentioned in the preceding section, may be served, shall, within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein and stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer in the contest; and all allegations set forth in the notice not denied in the answer shall be taken as admitted.

§ 3. PERIODS FOR CANVASS LIMITED.] In all elections in any council or representative district at which any member of the legislative assembly is elected, the officers or board of canvassers whose duties it is to canvass the returns of said district, shall do so within twenty days from said election, and the canvass for county officers shall take place within fifteen days after said election; and sections thirty-one and thirty-six of chapter seventeen, approved, January 13th, 1871, being an act entitled "an act providing for elections and to prescribe the canvass and return of the same," is hereby amended accordingly.

§ 4. TESTIMONY WHEN TAKEN.] In all contested election cases the contestant may begin to take testimony as soon as the notice specified in section one is served; and the returned member may take testimony as soon as his answer is served; and both parties to said contest may continue to take testimony for ten days after the time for serving the answer of the returned member has expired, after which time the contestant may take testimony in rebuttal only for five days.

§ 5. DEPOSITIONS—NOTICE HOW SERVED.] The party desiring to take a deposition under the provisions of this chapter, shall give the opposite party notice in writing of the time and place when and where the same will be taken, of the names of the witnesses to be examined and their place of residence, and the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or by any agent or attorney authorized by him to take testimony or cross examine witnesses in the matter of such contest. If by the use of reasonable diligence personal service cannot be made, the service may be made by leaving a copy of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual routes of travel to attend, and one day for preparation, exclusive of Sundays and the day of service.

§ 6. PLACES TO TAKE TESTIMONY.] Testimony on contested election cases under this chapter shall not be taken at more than two places at the same time by either party.

§ 7. SUBPŒNAS APPLIED FOR.] When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna to any officer having a seal, or any justice of the peace for any county where the testimony is to be taken.

§ 8. SUBPŒNAS AUTHORIZED] The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpœna directed to all such witnesses as shall be named to him, requiring their attendance before him at some time and place named in the subpœna, in order to be examined respecting the contested election.

§ 9. DEPOSITIONS WITHOUT NOTICE.] It shall be competent for the parties, their agents or attorneys authorized to act in the premises, by consent in writing, to take depositions without notice. Any written consent given as aforesaid shall be returned with the depositions.

§ 10. SUBPŒNA SERVED.] Each witness shall be duly served with a subpœna by a copy thereof, delivered to him or at his place of abode.

§ 11. ATTENDANCE ONLY IN COUNTY.] No witness shall be required to attend an examination out of the county in which he may reside, or be served with a subpœna.

§ 12. PENALTY FOR FAILURE.] Any person who, having been summoned in the manner above described, refuses or neglects to attend and testify unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered with costs of suit, by the party at whose instance the subpœna was issued, and for his use, by action of debt, and shall also be liable to an indictment for a misdemeanor and punishment by fine and imprisonment.

§ 13. NON-RESIDENT WITNESSES.] Depositions of witnesses residing outside of the district and beyond the reach of subpœna may be taken before an officer authorized to take testimony in civil actions.

§ 14. EXAMINATION OF WITNESSES.] All witnesses who attend in obedience to a subpœna, or who attend voluntarily at the time and place appointed, of whose examination notice has been given, as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpœna, or in case of his absence by any other officer who is authorized to issue such subpœna, or by the officer before whom the depositions are to be taken by written consent, as the case may be, touching all such matters respecting the election about to be contested as shall be proposed by either of the parties or their agents or attorneys.

§ 15. EVIDENCE CONFINED TO ISSUE.] The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections one and two of this chapter.

§ 16. TESTIMONY WRITTEN.] The officer shall cause the testimony of the witnesses to be reduced to writing in his presence, and in the presence of the parties, or their agents or attorneys, if attending, to be duly attested by the witnesses respectively.

§ 17. PRODUCTION OF PAPERS.] The officer before whom any deposition is taken shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce certified or sworn copies of the same in case they may be official papers, such person shall be liable to all the penalties prescribed in section 12. All papers thus produced, and all certified or sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the secretary of the territory for the use of the legislative assembly.

§ 18. ADJOURNMENTS] The taking of the testimony may, if so stated in the notice, be adjourned from day to day.

§ 19. DOCUMENTS TO BE ATTACHED.] The notice to take depositions with the proof or acknowledgment of the service thereof, and a copy of the subpœna, where any has been served, shall be attached to the deposition, when completed, together with a copy of the notice of contest, and answer of the returned member, which shall be annexed to the depositions taken and transmitted with them to the secretary of the territory.

§ 20. TRANSMITTED TO SECRETARY.] All parties taking testimony to be used in a contested election case, when the taking of the same is completed, and without unnecessary delay, shall certify and carefully seal and forward the same to the secretary of the territory by mail at Yankton, Dakota territory, and shall indorse on the same the title of the same; and the secretary is hereby authorized to open the same at the instance of either party, his agent or attorney.

§ 21. FEES OF OFFICERS AND WITNESSES.] Every witness attending by virtue of any subpœna herein directed to be issued, and all officers who may be employed in taking testimony in contested election cases under this chapter, or serving any subpœna or notice herein authorized, shall be entitled to receive from the party at whose instance the service or attendance shall have been performed such fees as are allowed for similar service in civil actions in courts of record in this territory.

§ 22. NO LEGISLATIVE EXPENSE.] No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to a contested election case for expenses incurred in prosecuting or defending the same.

§ 23. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, February 16, 1877.

CHAPTER 48.

LEGISLATIVE APPORTIONMENT.

AN ACT to Apportion the Representation in the Legislative Assembly

§ 1. FIRST DISTRICT, UNION COUNTY.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* The county of Union shall constitute the first council and representative district, and shall be entitled to two members of the council and four members of the house of representatives.

§ 2. SECOND DISTRICT, CLAY COUNTY.] The county of Clay shall constitute the second council and representative district, and shall be entitled to one member of the council and four members of the house of representatives.

§ 3. THIRD DISTRICT, YANKTON COUNTY.] The county of Yankton shall constitute the third council and representative district, and shall be entitled to two members of the council and four members of the house of representatives.

§ 4. FOURTH DISTRICT, BON HOMME COUNTY.] The county of Bon Homme shall constitute the fourth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives

§ 5. FIFTH DISTRICT, LINCOLN AND TURNER COUNTIES.] The counties of Lincoln and Turner shall constitute the fifth council and representative district, and shall be entitled to two members of the council and three members of the house of representatives.

§ 6. SIXTH DISTRICT, MINNEHAHA COUNTY.] The county of Minnehaha shall constitute the sixth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

§ 7. SEVENTH DISTRICT, CASS, RICHLAND, ETC.] The counties of Cass, Richland, Ransom, Barnes and Stutsman shall constitute the seventh council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 8. EIGHTH DISTRICT, GRAND FORKS AND PEMBINA COUNTIES.] The counties of Pembina and Grand Forks shall constitute the eighth council district, and be entitled to one member of the council.

§ 9. NINTH DISTRICT, BURLEIGH AND STEVENS COUNTIES.] The counties of Burleigh and Stevens shall constitute the ninth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 10. TENTH DISTRICT, HUTCHINSON, ARMSTRONG, ETC.] That the counties of Hutchinson, Armstrong, Hanson and Davison shall constitute the tenth representative district, and shall be entitled to one member of the house of representatives.

§ 11. ELEVENTH DISTRICT, BROOKINGS, LAKE, ETC.] That the counties of Brookings, Lake and Moody shall constitute the eleventh representative district, and shall be entitled to two members of the house of representatives.

§ 12. TWELFTH—TRAILL COUNTY.] The county of Traill shall constitute the twelfth representative district, and shall be entitled to one member of the house of representatives.

§ 13. THIRTEEN—PENNINGTON, CUSTER, ETC.] The counties of Lawrence, Pennington and Custer shall constitute the thirteenth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives. The counties of Charles Mix, including the Yankton reservation, Brule, Hyde, Hughes, Buffalo and Sully are attached to the thirteenth council and representative district for election purposes.

§ 14. IF TERRITORY DIVIDED.] In case of a division of the territory of Dakota by congress, by the formation of a new territory out of the northern portion thereof, and the ratification of the agreement for ceding the Black Hills by congress, in addition to the representation given by the preceding section, there shall be allowed to the county of Lawrence one member of the council and two members of the house of representatives, and there shall be allowed the counties of Pennington and Custer two members of the council and one member of the house of representatives.

§ 15. CONTINGENT ADDITIONS.] In case of the division of the territory of Dakota, by the formation of a new territory from the northern portion thereof, there shall be allowed, in addition to the representation provided for by this act, one member of the house of representatives to the counties of Lincoln and Turner, one member of the council to the county of Minnehaha, one member of the council to the county of Yankton, one member of the council to the county of Clay, one member of the house of representatives to the county of Bon-Homme, and one member of the house of representatives to the county of Union; and if, at the time of the general election in 1878, the district of the Black Hills should not be under the jurisdiction of the territory of Dakota, then the representatives named in section thirteen shall be distributed as follows: one member of the house of representatives to the county of Union, one member of the council to the county of Yankton, and one member of the house of representatives to the counties of Hutchinson, Armstrong, Hanson and Davison.

§ 16. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval by the governor.

Approved, February 17, 1877.

CHAPTER 49.

REAL ESTATE OF RELIGIOUS BODIES.

AN ACT relative to the Holding and Transferring of Real Estate by any legal Officer of a Religious Society and their Successors in Office.

§ 1. TITLE VESTS IN SUCCESSORS, IN TRUST.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That all grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying or granting real estate in this territory to any bishop, dean, rector, vestryman, deacon, director, minister or any other officer or officers of any church or organized religious society in trust for the use and benefit of such society of which they are such officer or officers, which have been or may be made, done or executed, shall vest in their successor or successors in office, or other officer which such society may at any time designate, all the legal or other title, to the same extent and in all respects the same, as trustee of such trust, for the use and benefit of such society, which such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, had under such grant, deed or act; and all transfers or sales made by such officer or officers so acquiring title by virtue of this act by succession in office shall have all the validity, force and effect that it would have had had it been made by such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, while holding under and by virtue of such grant, deed or act of such legislative body.

§ 2. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval by the governor.

Approved, January 11, 1871.

CHAPTER 50.

REGISTRATION OF WARRANTS.

AN ACT to Provide for the Registration of Warrants and Regulating the Order of Paying the Same.

§ 1. ORDER OF PAYMENT.] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, That all warrants upon the territorial treasurer, the treasurer of any county or any municipal corporation therein, issued after January first, 1875, shall be paid in the order of their presentation therefor.

§ 2. WARRANT REGISTER—ENTRIES.] The territorial treasurer and the treasurer of every organized county and every incorporated city or town therein, shall provide himself with, and keep a warrant register, which register shall show in a column arranged for that purpose, the number, date and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person to whose name the same is registered, the date of payment when made, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered, is mailed as hereinafter provided.

§ 3. DUTY OF OFFICER—FEE.] It shall be the duty of every such treasurer, upon the payment of a fee of ten cents, when the amount is less than twenty-five dollars, and twenty-five cents if over that amount, by the holder of any warrant, or by any person presenting the same for registration, in the presence of such person, to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall endorse "registered for payment" with the date of such registration, and shall sign such endorsement: *Provided*, That nothing in this act shall be construed to require the holder of any warrant to register the same, or to modify or repeal the law as it now is relating to presentation and endorsement if "not paid for want of funds" and interest thereafter.

§ 4. FUNDS SET ASIDE IN SEALED PACKAGE.] It shall be the duty of every such treasurer to set aside in a special and sealed package the money for the payment of each registered warrant in the order of its registration, as soon as money sufficient for the payment of such warrant is received to the credit of the particular fund upon which such warrant is drawn. Such package shall be indorsed with the number and description of such warrant, and the name and address of the person to whose name the same is registered, and interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, and shall endorse the date of the mailing of such notice upon such sealed package, and shall pay over to the party holding such warrant such sum when called for.

§ 5. DAILY FOOTING OF RECEIPTS.] Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book, and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he shall close the account for that year in such register, and shall carry forward the excess.

§ 6. FAILURE OF OFFICER—FORFEITURE.] Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received, or who shall fail to keep his cash book footed from day to day, as required by this act, for the space of three days, shall forfeit for each offense, the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer.

§ 7. INSPECTION OF BOOKS.] The cash book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid.

§ 8. FAILURE TO MAIL NOTICE—PENALTY.] Any treasurer who shall for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, fail to mail notice thereof to the person registering such warrant, shall forfeit to such person ten per cent. on the amount of such warrant, and ten per cent. additional for every thirty days thereafter during which such failure shall continue.

§ 9. PENALTY ON BOND.] Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person, the payment of whose warrant is thereby postponed, in the sum of three hundred dollars, to be recovered in a civil action.

§ 10. REPEAL.] All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 11. WARRANTS FOR TAXES.] Nothing in this act shall be so construed as to prevent payment of taxes in warrants as now provided by law: *Provided, further*, That this act shall not apply to the counties of Minnehaha and Union.

§ 12. IMMEDIATE EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

CIVIL CODE.

AN ACT to provide a Civil Code for the Territory of Dakota.

§ 1. Title of code.] *Be it enacted by the Legislative Assembly of the Territory of Dakota.* This act shall be known as the civil code of the territory of Dakota.

§ 2. Origin of law.] Law is a rule of property and of conduct prescribed by the sovereign power.

§ 3. Expression of law.] The will of the sovereign power is expressed:

One—By the organic act passed by congress, creating a temporary government in this territory, and vesting the legislative power in the governor and a legislative assembly, and extending it to all rightful subjects of legislation consistent with the constitution of the United States and that act.

Two—By other statutes enacted by congress, or by the legislative assembly.

Three—By the ordinances of other and subordinate legislative bodies.

§ 4. Common law divided.] The common law is divided into:

One—Public law, or the law of nations.

Two—Domestic, or municipal law.

§ 5. Evidence of same] The evidence of the common law is found in the decisions of the tribunals.

§ 6. Codes exclude common law.] In this territory there is no common law in any case where the law is declared by the codes.

§ 7. Two classes civil rights.] All original civil rights are either:

One—Rights of person; or

Two—Rights of property.

§ 8. Rights—how waived.] Rights of property and of person may be waived, surrendered, or lost by neglect, in the cases provided by law.

§ 9. Code divisions] This code has four general divisions:

One—The first relates to persons;

Two—The second to property;

Three—The third to obligations;

Four—The fourth contains general provisions relating to persons, property and obligations.

DIVISION FIRST.

PERSONS.

PART I. Persons.
II. Personal rights.
III. Personal relations.

PART 1.

PERSONS.

§ 10. MINORITY DEFINED.] Minors are:

One—Males under twenty-one years of age.

Two—Females under eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born, to the same minute of the corresponding day completing the period of minority.

§ 11. ADULTS.] All other persons are adults.

§ 12. UNBORN CHILD.] A child conceived but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth.

§ 13. UNSOUND MIND.] Persons of unsound mind, within the meaning of this code, are idiots, lunatics and imbeciles.

§ 14. CUSTODY OF MINORS.] The custody of minors and persons of unsound mind is regulated by part 3 of this division.

§ 15. MINORS' DISABILITY.] A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

§ 16. POWERS—CONDITIONAL.] A minor may make any other contract, than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on marriage, and on master and servant.

§ 17. MINORS' CONTRACTS.] In all cases other than those specified in sections 18 and 19, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within one year's time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.

§ 18. NECESSARIES OF MINOR.] A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

§ 19. STATUTORY CONTRACTS.] A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

§ 20. IDIOTS' POWERS.] A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

§ 21. RESCISSION.] A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in the chapter of rescission of this code.

§ 22. INCAPACITY DETERMINED.] After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

§ 23. MINORS' WRONGS.] A minor, or a person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any other person.

§ 24. DAMAGES.] A minor, or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

§ 25. RIGHTS OF ACTION.] A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.

§ 26. INDIAN RIGHTS—DISABILITIES.] Indians resident within this territory have the same rights and duties as other persons, except that:

1. They cannot vote or hold office, and that:

2. They cannot grant, lease or incumber Indian lands, except in the cases provided by special laws:

PART 2.

PERSONAL RIGHTS.

§ 27. GENERAL PERSONAL RIGHTS.] Besides the personal rights mentioned or recognized in the political code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

§ 28. DEFAMATION.] Defamation is effected by:

1. Libel, or,
2. Slander.

§ 29. LIBEL DEFINED.] Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

§ 30. SLANDER.] Slander is a false and unprivileged publication, other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted or punished for crime.
2. Imputes in him the present existence of an infectious, contagious or loathsome disease.
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.
4. Imputes to him impotence or want of chastity, or,
5. Which, by natural consequence, causes actual damage.

§ 31. PRIVILEGED COMMUNICATIONS.] A privileged communication is one made:

One—In the proper discharge of an official duty.

Two—In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

Three—In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

Four—By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

Five—In the cases provided for in subdivisions three and four of this section, malice is not inferred from the communication or publication.

§ 32. OFFENSES AGAINST PERSONAL RELATION.] The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master.

3. The seduction of a wife, daughter, orphan sister, or servant, and,

4. Any injury to a servant, which affects his liability to serve his master.

§ 33. FORCE TO PROTECT.] Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

PART 3.

PERSONAL RELATIONS.

TITLE I.

MARRIAGE.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I.—VALIDITY.

§ 34. MARRIAGE CONTRACT DEFINED.] Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

§ 35. PROOF OF.] Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

§ 36.] LAWFUL AGE.] Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

§ 37. PRESENT CONSENT.] The consent to a marriage must be to one commencing instantly, and not to an agreement to marry afterwards,

§ 38. INCESTUOUS MARRIAGES.] Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half, as well as of the whole blood, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

§ 39. VOIDABLE MARRIAGES.] If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. Every marriage of a step-father with a step-daughter, or of a step-mother with a step-son, is illegal and void.

§ 40. ILLEGAL MARRIAGE.] A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

One—The former marriage has been annulled or dissolved.

Two—Unless such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

§ 41. PARDON DOES NOT RESTORE.] No pardon granted after the approval of this act, to any person sentenced to imprisonment for life in this territory restores such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage.

§ 42. INDIAN MARRIAGE.] Indians contracting marriage according to the Indian custom, and cohabiting as husband and wife, are lawfully married.

§ 43. OTHER LAW DOES NOT APPLY.] The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

§ 44. PROMISE—LIMITATIONS.] A promise of marriage is subject to the same rules as contracts in general, but neither party to a promise, or contract to marry, is bound by a promise made in ignorance of the other's want of personal chastity; and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. All marriages contracted without this territory, which would be valid by the laws of the country in which the same were contracted, are valid in this territory.

§ 45. SOLEMNIZATION.] Marriage must be solemnized, authenticated and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage. It may be solemnized by either a justice of the supreme court, a judge of the probate court, or justice of the peace, a mayor, or by a minister of the gospel, or priest of any denomination; and in case of Indians by the peacemakers, their agents, or superintendent of Indian affairs.

§ 46. FORM OF DECLARATION—RECORD.] No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, and of at least one witness, that they take each other as husband and wife. Persons married without the solemnization provided for in this and the preceding section must, for the purpose of authentication, jointly make a written declaration of marriage, substantially showing:

One—The names, ages and residence of the parties.

Two—The fact of the marriage.

Three—The time of the marriage.

Four—That the marriage has not been solemnized.

If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

One—The names, ages and residences of the parties.

Two—The fact of marriage.

Three—That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties, and attested by at least three witnesses. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. And if either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed by action in the district court to have the validity of the marriage determined and declared.

§ 47. PREREQUISITES OF.] The person solemnizing a marriage must ascertain to his satisfaction:

One—The identity of the parties.

Two—Their real and full names, and places of residence.

Three—That they are of sufficient age to be capable of contracting marriage; and

Four—The name and place of residence of the witness, or of two witnesses, if more than one is present.

§ 48. RECORD OF SAME.] The person solemnizing a marriage must enter the facts ascertained by him, pursuant to the last section, and the date of the solemnization, in a book to be kept by him for that purpose.

§ 49. CELEBRANT'S CERTIFICATE.] The person solemnizing a marriage must furnish to either party, on request, a certificate thereof, signed by him, specifying:

One—The names and places of residence of the parties married.

Two—That they were known to him, or were satisfactorily proved by the oath of a person known to him, to be the persons described in such certificate.

Three—That he had ascertained that they were of sufficient age to contract marriage.

Four—The name and place of residence of the attesting witness, or of two witnesses.

Five—The time and place of such marriage; and

Six—That after due inquiry made, there appeared to be no lawful impediment to such marriage.

§ 50. REGISTRY.] The certificate mentioned in the last section may, within six months after the marriage, be filed with the clerk of the city or town where the marriage was solemnized, or where either of the parties reside, or the register of deeds of such county, and, when thus filed, must be entered in a book to be provided by such officer, in the alphabetical order of the name of each party, and in the order of time in which it is filed.

§ 51. FACTS IN REGISTRY.] The entry required by the last section must specify:

One—The name and place of residence of each party.

Two—The time and place of marriage.

Three—The name and official station of the person signing the certificate; and

Four—The time when the certificate was filed.

§ 52. Proof and Acknowledgement.] If a certificate of marriage is signed by a minister or priest, there must be indorsed or annexed, before filing, a certificate of a magistrate residing in the same county with the clerk, that the person by whom it is signed is personally known to such magistrate, and has acknowledged the execution of the certificate, in his presence, or that the execution of the certificate by a minister or priest of some religious denomination has been proved to the magistrate by the oath of a person known to him and who saw the certificate executed.

§ 53. Record evidence.] A certificate or declaration of marriage, or the entry thereof made as above directed, or a copy of the certificate or declaration or entry, duly certified, is presumptive evidence of the fact of the marriage.

§ 54. Causes for annulling marriage.] A marriage may be annulled by an action in the district court to obtain a decree of nullity, for any of the following causes existing at the time of the marriage:

One—That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

Two—That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

Three—That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

Four—That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

Five—That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Six—That either party was, at the time of the marriage, physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.

Every minister or magistrate who solemnizes any marriage where either of the parties is known to him to be under the age of legal consent, and without the consent of his or her parents or guardian, or persons having charge of him or her, or where either of the parties is known to him to be of unsound mind, or any marriage to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor.

§ 55. Limitation of action.] An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

One—For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent, or by a parent, guardian or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

Two—For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife.

Three—For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

Four—For causes mentioned in subdivision four; by the party injured, within four years after the discovery of the facts constituting the fraud.

Five—For causes mentioned in subdivision five; by the injured party, within four years after the marriage.

Six—For causes mentioned in subdivision six; by the injured party, within four years after the marriage.

§ 56. CHILDREN LEGITIMATE.] Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

§ 57. CUSTODY OF.] The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 58. EFFECT OF JUDGMENT.] A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.—DISSOLUTION.

§ 59. DISSOLVED—HOW.] Marriage is dissolved only:

One—By the death of one of the parties; or,

Two—By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. The district court in each county or subdivision, has such jurisdiction, in an action according to the code of civil procedure.

§ 60. CAUSES FOR DIVORCE—DEFINITIONS—RESTRICTIONS.] Divorces may be granted for any of the following causes:

One—Adultery.

Two—Extreme cruelty.

Three—Willful desertion.

Four—Willful neglect.

Five—Habitual intemperance.

Six—Conviction for felony.

1. Adultery, as to its definition as here used, is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

2. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage.

3. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

When one party is induced by the stratagem or fraud of the other party, to leave the family dwelling place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fullfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

4. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

5. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Willful desertion, willful neglect, or habitual intemperance, must continue for two years before either is a ground for divorce.

§ 61. DENIAL OF DIVORCE—CAUSES—DEFINITIONS.] Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

One—Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

Two—Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Three—Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce.
2. Reconciliation and remission of the offense by the injured party.
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness. Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Four—Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as above provided, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

§ 62. ADULTERY BY HUSBAND.] When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

§ 63. BY WIFE—LEGITIMACY.] When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

§ 64. GUILTY CANNOT MARRY.] When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party cannot marry any person except the innocent party, until the death of the other.

ARTICLE III.—OTHER CAUSES FOR DENYING DIVORCE.

§ 65. TIME LIMITED.] A divorce must be denied:

One—When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

Two—When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence,

Three—In all other cases when there is an unreasonable lapse of time before the commencement of the action.

Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense. The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 66. ONLY STATUTORY LIMITATIONS.] There are no limitations of time for commencing actions for divorce, except such as are contained in the foregoing section, 65.

§ 67. TERM OF RESIDENCE.] A divorce must not be granted unless the plaintiff has, in good faith, been a resident of the territory ninety days next preceding the commencement of the action.

§ 68. PRESUMPTION OF DOMICILE.] In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation, each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 69. AFFIRMATIVE PROOF REQUIRED.] No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

Rep.

ARTICLE IV.—GENERAL PROVISIONS.

§ 70. MAINTENANCE.] Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of a wife and her children, or any of them, by the husband.

§ 71. ALIMONY PENDING ACTION.] While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

§ 72. CUSTODY OF CHILDREN.] In an action for divorce, the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 73. SUPPORT.] Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

§ 74. SECURITY—SEPARATE ESTATE—HOMESTEAD.] The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband. The court, in rendering a decree of divorce, may assign the homestead to the innocent party, either absolutely or for a limited period, according to the facts of the case, and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of the wife, and for the custody, education and support of the children, as above provided, are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

CHAPTER III.

HUSBAND AND WIFE.

§ 75. MUTUAL RELATIONS.] Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

§ 76. HEAD OF FAMILY.] The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

§ 77. DUTY TO SUPPORT.] The husband must support himself and his wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and he is unable, from infirmity, to support himself.

§ 78. SEPARATE PROPERTY—DWELLING.] Except as mentioned in section 77, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

§ 79. CONTRACTS.] Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried, subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

§ 80. CANNOT ALTER RELATIONS.] A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 81. SEPARATION.] The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 82. JOINT TENANTS—WIFE'S CONVEYANCE.] A husband and wife may hold real or personal property together, as joint tenants, or tenants in common. The wife may, without the consent of her husband, convey her separate property. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner provided by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the register of deeds of the county or subdivision in which the parties reside. The filing of the inventory in the register's office is notice and prima facie evidence of the title of the wife.

§ 83. SEPARATE AND MUTUAL RIGHTS.] Neither husband nor wife, as such, is answerable for the acts of the other.

Two—The earnings of the wife are not liable for the debts of the husband, and the earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Three—The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Four—The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Five—No estate is allowed the husband as tenant by courtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 84. WIFE'S NECESSARIES.] If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support and recover the reasonable value thereof from the husband.

§ 85. ABANDONMENT—SEPARATION.] A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justitied by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

TITLE II.

PARENT AND CHILD.

CHAPTER I. By birth.
II. By adoption.

CHAPTER I.

CHILDREN BY BIRTH.

§ 86. LEGITIMACY PRESUMED.] All children born in wedlock are presumed to be legitimate.

§ 87. DEFINITIONS.] All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

§ 88. DISPUTED LEGITIMACY.] The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

§ 89. BOTH PARENTS SUPPORT CHILDREN.] The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

§ 90. TITLE TO CUSTODY—FATHER.] The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

§ 91. OF ILLEGITIMATE CHILD.] The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

§ 92. COURT MAY DIRECT.] The district court may direct an allowance to be made to a parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

§ 93. PROPERTY CONTROL.] The parent, as such, has no control over the property of the child.

§ 94. PARENTAL ABUSE.] The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relative within the third degree, or by the officers of the poor where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

§ 95. PARENT'S POWER CEASES.] The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of the child.
2. Upon the marriage of the child; or,
3. Upon its attaining majority.

§ 96. PUBLIC ACTION FOR SUPPORT CHILD.] If a parent chargeable with the support of a child dies, leaving it chargeable upon the township or county, and leaving an estate sufficient for its support, the officers of the poor, in the name of the township or county respectively, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

§ 97. SUPPORT OF POOR.] It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent, is binding.

§ 98. NEGLECT OF CHILD.] If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

§ 99. PARENT WHEN NOT LIABLE.] A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 100. SUPPORT OF STEP-CHILDREN.] A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

§ 101. AFTER MAJORITY.] Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

§ 102. CHILD'S EARNINGS.] The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 103. WAGES PAID.] The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

§ 104. CHANGE RESIDENCE.] A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

§ 105. NON-LIABILITY.] Neither parent nor child is answerable, as such, for the act of the other.

§ 106. FATHER'S AND MOTHER'S CUSTODY.] The husband and wife, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of *habeas corpus* to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules prescribed in section 127, under the title of "guardian and ward."

CHAPTER II.

ADOPTION.

§ 107. MINOR ADOPTED.] Any minor child may be adopted by any adult person, in the cases, and subject to the rules, prescribed in this chapter.

§ 108. RELATIVE AGE LIMITED.] The person adopting a child must be at least ten years older than the person adopted.

§ 109. MARRIED PERSONS LIMITED.] A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman not thus separated from her husband, without his consent, provided the husband or wife not consenting, is capable of giving such consent.

§ 110. CONSENT OF PARENT.] A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother, deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child, on account of cruelty or neglect.

§ 111. OF CHILD.] The consent of a child, if over the age of twelve years, is necessary to its adoption.

§ 112. PROBATE APPROVAL.] The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

§ 113. SEPARATE EXAMINATION.] The probate judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

§ 114. CHANGE OF NAME.] A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

§ 115. PARENTS RELIEVED.] The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and of all responsibility for, the child so adopted, and have no right over it.

§ 116. ILLEGITIMATE CHILD.] The father of an illegitimate child. by publicly acknowledging it as his own, receiving it as such, with the consent of his wife if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE III.

GUARDIAN AND WARD.

§ 117. GUARDIAN DEFINED.] A guardian is a person appointed to take care of the person or property of another.

§ 118. WARD.] The person over whom, or over whose property, a guardian is appointed, is called his ward.

§ 119. GUARDIANS CLASSED.] Guardians are either:

1. General; or,
2. Special.

§ 120. GENERAL.] A general guardian is a guardian of the person, or of all the property of the ward within this territory, or of both.

§ 121. SPECIAL.] Every other is a special guardian.

§ 122. HOW AND BY WHOM APPOINTED.] A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

One—If the child be legitimate, by the father with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Two—If the child be illegitimate, by the mother.

§ 123. POWER.] No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

§ 124. PROBATE JURISDICTION.] A guardian of the person or property, or both, of a person residing in this territory, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section 122, by the probate court, as provided in the probate code.

§ 125. OF UNSOUND MIND.] A guardian of the property, within this territory, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

§ 126. EXCLUSIVE CONTROL.] In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

§ 127. RULES GOVERNING SECTION.] In awarding the custody of a minor, or in appointing a general guardian, the court or judge is to be guided by the following considerations:

One—By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of a sufficient age to form an intelligent preference, the court or judge may consider that preference in determining the question.

Two—As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Three—Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.
2. To one who was indicated by the wishes of a deceased parent.
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
4. To a relative.

§ 128. GUARDIAN'S POWER.] A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

§ 129. OF THE PERSON.] A guardian of the person is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the territory, but not elsewhere, without permission of the court.

§ 130. OF THE PROPERTY.] A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

§ 131. RELATION DEFINED.] The relation of guardian and ward is confidential, and is subject to the provisions of the title on trusts.

§ 132. COURT CONTROL.] In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 133. JOINT GUARDIANS.] On the death of one or two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

§ 134. REMOVAL—CAUSES.] A guardian may be removed by the probate court for any of the following causes:

One—For abuse of his trust.

Two—For continued failure to perform its duties.

Three—For incapacity to perform its duties.

Four—For gross immorality.

Five—For having an interest adverse to the faithful performance of his duties.

Six—For removal from the territory.

Seven—In the case of guardian of the property, for insolvency; or

Eight—When it is no longer proper that the ward should be under guardianship.

§ 135. PARENTAL APPOINTEE SUPERSEDED.] The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided in section 134.
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

§ 136. COURT APPOINTEE.] The power of a guardian appointed by a court is suspended only:

One—By order of the court; or,

Two—If the appointment was made solely because of the ward's minority, by his obtaining majority; or,

Three—The guardianship over the person of the ward by the marriage of the ward.

§ 137. WARD'S MAJORITY.] After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

§ 138. LIMITATION OF DISCHARGE.] A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

§ 139. ASYLUM FOR UNSOUND MIND.] A person of unsound mind may be placed in an asylum for such persons upon the order of the probate court of the county in which he resides, as follows:

One—The court must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large.

Two—Before granting the order the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person, duly sworn for that purpose.

Three—After the order is granted the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may appeal to the district court and demand therein an investigation before a jury, which must be substantially, in all respects, conducted as under an inquisition of lunacy.

TITLE IV.

MASTER AND SERVANT.

§ 140. APPRENTICESHIP AUTHORIZED.] Male minors, and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves, by a writing called an indenture, as fully as if they were of age, to serve as clerks, apprentices or servants, in a particular calling, until majority (except in the case of females, who cannot bind themselves further than until the age of eighteen,) or for any shorter time.

§ 141. CONSENT—BY WHOM.] Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or endorsed thereon, signed:

1. By the father and mother of the apprentice.
2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother.
3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor.
4. If the mother is dead, or lacks capacity to consent, then by the father.
5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,
6. If there is no such parent, executor or guardian, then by the officers of the poor of the town or county, or by any two justices of the peace of the county, or by the probate judge.

§ 142. LIABILITY.] A parent, executor or guardian, consenting to an indenture, is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor.

§ 143. POOR MAY BE BOUND.] Any child who is chargeable, or whose parents are chargeable to a county or city poor house, or who is in such poor house may be bound to service until attaining twenty-one years, or if a female until attaining eighteen years, by the proper officers of the poor, as provided in this title; but such binding by said officers must be with the consent in writing of the justice of the peace of the county or city.

§ 144. INDIAN CHILD.] No child of an Indian woman can be bound, under this title, except in the presence, and with the consent of a justice of the peace; and his certificate of consent must be filed with the probate judge of the county where the indenture is executed.

§ 145. AGE STATED.] In every indenture of apprenticeship the age of the apprentice must be stated and such statement is presumptive evidence thereof; and before an officer executes an indenture, or consents thereto, he must inform himself of the age of the apprentice.

§ 146. CONSIDERATION.] If there is any pecuniary consideration for an indenture of apprenticeship on either part, it must be stated therein.

§ 147. EDUCATION REQUIRED.] The indenture shall also contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture; and that he will give him a new bible at the expiration of his term of service.

§ 148. FILING COUNTERPART.] Every officer executing an indenture of apprenticeship must file a counterpart thereof with the probate judge of the county in which he is an officer.

§ 149. IMMIGRANT MINOR.] An immigrant minor may bind himself to service until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country, it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term.

§ 150. ACKNOWLEDGMENT.] Every indenture under section 149 must be duly acknowledged by the minor on a private examination before a probate judge or a justice of the peace, and a certificate of the acknowledgment, showing that the same was made freely, must be indorsed upon the contract.

§ 151. ASSIGNMENT ALLOWED.] The master, under an indenture specified in section 149, may assign it, by writing indorsed thereon, and with the approval also indorsed of a magistrate mentioned in section 150.

§ 152. INDENTURE VOID, ETC.] No indenture or contract for the service of an apprentice is binding upon him unless made as hereinbefore prescribed.

§ 153. OVERSEERS OF POOR.] The county overseer of the poor, and the overseers of the poor of cities and towns, must see that every apprentice or other servant in their respective counties, cities or towns, is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law.

§ 154. PENALTY UPON ABSENT APPRENTICE.] If an apprentice, for whose instruction the master receives no pecuniary compensation, willfully absents himself from service without leave, he may be compelled to serve double the time of such absence unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term.

§ 155. FREE VOCATION.] No person may accept from an apprentice or servant, an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant, any consideration for exercising his vocation in any place after his term of service has expired.

§ 156. PENALTY FOR RESTRAINT.] Any consideration exacted contrary to the last section, may be recovered back with interest, and every person accepting such agreement or exacting such consideration, is liable to the apprentice or servant in a penalty of one hundred dollars.

§ 157. DECEASED MASTER.] The executors or administrators of the master of any apprentice bound by officers of the poor, may assign the indenture, with the written consent of the apprentice, acknowledged before a justice of the peace.

§ 158. CONSENT TO ASSIGNMENT.] If an apprentice refuses consent to an assignment under the last section, the probate or district court may authorize such assignment without his consent, upon application, after fourteen days' notice, to the apprentice or to his parents or guardian, if he has any in the county.

DIVISION SECOND.

PROPERTY.

PART I. Property in General.
II. Real, or Immovable Property.
III. Personal, or Movable Property.
IV. Acquisition of Property.

PART 1.

PROPERTY IN GENERAL.

TITLE I. Nature of Property.
II. Ownership.
III. General Definitions.

TITLE I.

NATURE OF PROPERTY.

§ 159. OWNERSHIP DEFINED.] The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership, is called property.

§ 160. WHAT MAY BE OWNED.] There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

§ 161. WILD ANIMALS.] Animals, wild by nature, are the subjects of ownership while living only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

§ 162. PROPERTY CLASSED.] Property is either :
One—Real or immovable; or,
Two—Personal or movable.

§ 163. REAL DEFINED.] Real or immovable property consists of:
1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

§ 164. LAND DEFINED.] Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

§ 165. FIXTURES.] A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.

§ 166. APPURTENANCES.] A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

§ 167. PERSONAL PROPERTY DEFINED.] Every kind of property that is not real is personal.

CHAPTER I.

OWNERS.

§ 168. OWNERSHIP—LIMITATION.] The legislative assembly can pass no law interfering with the primary disposal of the soil. All property in this territory has an owner, whether that owner is the United States, or the territory, and the property public; or the owner, an individual, and the property private. The territory may also hold property as a private proprietor.

§ 169. LAND BELOW HIGH WATER MARK.] The ownership of land below ordinary high water mark, and of land below the water of a navigable lake or stream, is regulated by the laws of the United States or by such laws as, under authority thereof, the legislative assembly may enact. The territory is the owner of all property lawfully appropriated or dedicated to its own use; and of all property of which there is no other owner.

§ 170. WHO MAY CONVEY.] Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this territory.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

ARTICLE I.—INTERESTS IN PROPERTY.

§ 171. OWNERSHIP CLASSED.] The ownership of property is either:
1. Absolute; or,
2. Qualified.

§ 172. ABSOLUTE.] The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

§ 173. QUALIFIED.] The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited; or,
3. When the use is restricted.

§ 174. SOLE OWNERSHIP.] The ownership of property by a single person is designated as a sole or several ownership.

§ 175. OWNERSHIP OF PROPERTY.] The ownership of property by several persons is either:

1. Of joint interests.
2. Of partnership interests; or,
3. Of interests in common.

§ 176. JOINT TENANCY.] A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

§ 177. PARTNERSHIP.] A partnership interest is one owned by several persons, in partnership, for partnership purposes.

§ 178. COMMON TENANCY.] An interest in common is one owned by several persons not in joint ownership or partnership.

§ 179. DEFINITION.] Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 176.

§ 180. COMMENCEMENT AND DURATION.] In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

§ 181. PRESENT.] A present interest entitles the owner to the immediate possession of the property.

§ 182. FUTURE.] A future interest entitles the owner to the possession of the property only at a future period.

§ 183. PERPETUAL.] A perpetual interest has a duration equal to that of the property.

§ 184. LIMITED. A limited interest has a duration less than that of the property.

§ 185. FUTURE ESTATES CLASSED.] A future interest is either:

One—Vested; or

Two—Contingent.

§ 186. WHEN THEY VEST.] A future interest is vested when there is a person in being who would have a right, defeasable or indefeasable, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

§ 187. HOW CONTINGENT.] A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect, remains uncertain.

§ 188. ALTERNATIVE CONTINGENCIES.] Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 189. NOT VOID.] A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

§ 190. POSTHUMOUS HEIR.] When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

§ 191. FUTURE ESTATES PASS.] Future interests pass by succession, will and transfer, in the same manner as present interests.

§ 192. POSSIBILITIES.] A mere possibility, such as the expectancy of an heir-apparent, is not to be deemed an interest of any kind.

§ 193. ESTATES OF REALTY.] In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in part 2 of this division.

§ 194. APPLIES TO PERSONAL, ONLY.] The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided.

§ 195. FUTURE INTEREST LIMITED.] No future interest in property is recognized by the law, except such as is defined in this division of the code.

ARTICLE II.—CONDITION OF OWNERSHIP.

§ 196. CONDITIONS DEFINED.] The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

§ 197. CLASSED.] Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.

§ 198. ILLEGAL CONDITIONS VOID.] If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

§ 199. MARRIAGE LIMITATIONS.] Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

§ 200. RESTRAINT ON ALIENATION.] Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE III.—RESTRAINTS UPON ALIENATION.

§ 201. EXTENT OF LEGAL LIMIT.] The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 229.

§ 202. FUTURE LIMITATION VOID.] Every future interest is void in its creation, which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

§ 203. LEASES LIMITED.] No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant of any town or city lot, for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE IV.—ACCUMULATIONS.

§ 204. INCOME—FUTURE INTEREST.] Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

§ 205. ILLEGAL ACCUMULATION.] All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

§ 206. INCOME HOW DIRECTED.] An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

§ 207. VOID BEYOND MINORITY.] If, in either of the cases mentioned in the last section, the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

§ 208. PROBATE POWER.] When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the probate court, upon application, may direct a suitable sum to be applied thereto, out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

§ 209. OWN INCLUDES GAIN.] The owner of a thing owns also all its products and accessions.

§ 210. UNDIRECTED INCOME.] When, in consequence of a valid limitation of future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

§ 211. SUCCESSION DEFEATS CONTINGENCY.] A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

§ 212. FUTURE INTEREST DEFEATED.] A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

§ 213. WHEN NOT.] No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

§ 214. SAME.] No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITION.

§ 215. INCOME INCLUDES.] The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

§ 216. WHAT CREATES LIMITATION.] The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of this part of the code.

PART 2.

REAL OR IMMOVABLE PROPERTY.

TITLE I. General Provisions.
II. Estates in Real Property.
III. Rights and Obligations of Owners.
IV. Uses and Trusts.
V. Powers.

TITLE I.

GENERAL PROVISIONS.

§ 217. LAW GOVERNING.] Real property within this territory is governed by the law of this territory, except where the title is in the United States.

TITLE II.

ESTATES IN REAL PROPERTY.

CHAPTER I. Estates in General.
II. Termination of Estates.
III. Servitudes.

CHAPTER I.

ESTATES IN GENERAL.

§ 218. DURATION CLASSED.] Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance, or perpetual estates.
2. Estates for life.
3. Estates for years; or,
4. Estates at will.

§ 219. FEE DEFINED.] Every state of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

§ 220. ESTATES TAIL ARE FEES.] Estates tail are abolished; and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

§ 221. LIMITATION OF.] Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession, on the death of the first taker, without issue living at the time of his death.

§ 222. FREEHOLD DEFINED.] Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

§ 223. SAME.] An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

§ 224. FUTURE HOW LIMITED.] A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time, or otherwise, of a precedent estate, created at the same time.

§ 225. REVERSION DEFINED.] A reversion is the residue of an estate left, by operation of law, in the grantor, or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 226. REMAINDER.] When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

§ 227. SUSPENSION.] The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

§ 228. FURTHER DEFINED.] The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation within the meaning of section 201.

§ 229. REMAINDER IN FEE.] A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined, before they attain majority.

§ 230. SAME ON OTHER ESTATES.] Subject to the rules of this title, and of part 1 of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

§ 231. SUBSEQUENT LIFE ESTATES VOID.] Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons, the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

§ 232. REMAINDER ON SUCCESSIVE LIVES.] No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years unless it is for the whole residue of such term.

§ 233. ON TERM VOID, UNLESS.] A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such, that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

§ 234. TO PERSONS IN BEING.] No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 235. CONDITIONAL LIMITATION.] A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

§ 236. TO HEIRS OF BODY.] When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

§ 237. ON DEATH OF FIRST TAKER.] When a remainder, on an estate for life or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

§ 238. UNEXECUTED POWER.] A general or special power of appointment does not prevent the vesting of a future estate, limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

§ 239. OF ESTATE AT WILL.] A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant, in the manner prescribed by the next section, to remove from the premises within a period specified in the notice, of not less than one month.

§ 240. NOTICE SERVED.] The notice prescribed by the last section must be in writing, and must be served by delivering the same to the tenant, or to some person of discretion residing on the premises, or if neither can, with reasonable diligence, be found, the notice may be served by affixing it on a conspicuous part of the premises, where it may be conveniently read.

§ 241. SUBSEQUENT ACTION.] After the notice prescribed by sections 239 and 240 has been served in the manner therein directed, and the period specified by such notice has expired, but not before, the landlord may re-enter or proceed according to law to recover possession.

§ 242. THREE DAYS' NOTICE.] Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' previous written notice of intention to re-enter, served in the mode prescribed by section 240.

§ 243. WITHOUT NOTICE.] An action for the possession of real property leased or granted. with a right of re-entry, may be maintained at any time after the right to re-enter has accrued, without the notice prescribed in section 242.

CHAPTER III.

SERVITUDES.

§ 244. EASEMENTS ATTACHED TO OTHER LANDS.] The following land burdens or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.
8. The right of receiving air, light or heat from or over, or discharging the same upon or over, land.
9. The right of receiving water from or discharging the same upon land.
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.
12. The right of using a wall as a party wall.
13. The right of receiving more than natural support from adjacent land or things affixed thereto.
14. The right of having the whole of a division fence maintained by a coterminous owner.
15. The right of having public conveyances stopped, or of stopping the same on land.
16. The right of a seat in church.
17. The right of burial.

§ 245. OTHERS NOT ATTACHED.] The following land burdens or servitudes upon land, may be granted and held, though not attached to land:

One—The right to pasture, and of fishing and taking game.

Two—The right of a seat in church.

Three—The right of burial.

Four—The right of taking rents and tolls.

Five—The right of way.

Six—The right of taking water, wood, minerals, or other things.

§ 246. DOMINANT TENEMENT.] The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

§ 247. WHO CAN CREATE.] A servitude can be created only by one who has a vested estate in the servient tenement.

§ 248. WHO NOT HOLD.] A servitude thereon cannot be held by the owner of the servient tenement.

§ 249. EXTENT OF.] The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

§ 250. PARTITION OF.] In case of partition of the dominant tenement, the burden must be apportioned, according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

§ 251. RIGHT OF FUTURE OWNER.] The owner of a future estate in a dominant tenement may use easements attached thereto, for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

§ 252. RIGHT OF ACTION.] The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

§ 253. SAME.] The owner in fee of a servient tenement, may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

§ 254. EXTINGUISHMENT.] A servitude is extinguished.

One—By the vesting of the right to the servitude and the right to the servient tenement in the same person.

Two—By the destruction of the servient tenement.

Three—By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or excercise; or,

Four—When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. Incidents of Ownership.
II. Boundaries.

ARTICLE I.—INCIDENTS OF OWNERSHIP.

§ 255. LAND INCLUDES WATER.] The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

§ 256. INHERITANCE PROTECTED.] The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

§ 257. RIGHTS OF TENANT.] A tenant for years or at will, unless he is a wrong doer by holding over, may occupy the building, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy.

§ 258. LIMITED BY INSTRUMENT.] A tenant for years, or at will, has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

§ 259. SUCCESSION TO RIGHTS.] A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

§ 260. ASSIGNEES OF LESSOR OR LESSEE.] Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances, or relating to the title or possession of the premises.

§ 261. NOTICE TO CHANGE TERMS.] In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease, the terms, rent and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

§ 262. LIFE LEASE RENT.] Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

§ 263. AFTER DEATH.] Rent dependent on the life of a person may be recovered after, as well as before, his death.

§ 264. RIGHT OF ACTION.] A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an interventing estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

ARTICLE II.—BOUNDARIES.

§ 265. ABOVE AND BELOW SURFACE.] The owner of land in fee has the right to the surface, and to everything permanently situated beneath or above it.

§ 266. BANKS AND BEDS OF STREAMS.] Except where the grant under which the land is held indicates a different intent, the owner of the upland when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark, and all navigable rivers shall remain and be deemed public highways. In all cases where the opposite banks of any streams, not navigable, belong to different persons, the stream and the bed thereof shall become common to both.

§ 267. HIGHWAYS.] An owner of land, bounded by a road or street, is presumed to own to the center of the way, but the contrary may be shown.

§ 268. LATERAL SUPPORT.] Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

§ 269. TREES ON LAND.] Trees whose trunks stand wholly upon the land of one owner, belong exclusively to him, although their roots grow into the land of another.

§ 270. SAME ON LINE.] Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

§ 271. REPAIRS AND TAXES.] The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

§ 272. BOUNDARIES—FENCES.] Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.
2. The fences between them, unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

§ 273. LIMITATION.] Uses and trusts, in relation to real property, are those only which are specified in this title.

§ 274. LEGAL ESTATE CONFIRMED.] Every estate which is now held as a use, executed under any former statute of this territory, is confirmed as a legal estate.

§ 275. DEFINITION.] Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipt of the rents and profits thereof, is to deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

§ 276. TRUST VALID.] The last section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

§ 277. DIRECT TRANSFER.] Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

§ 278. LIMITATION OF PRECEDING.] The preceding sections of this title do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

§ 279. REQUISITES OF TRUSTS.] No trust in relation to real property is valid, unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing.

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

§ 280. TRUST PRESUMED.] When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

§ 281. INNOCENT PURCHASER.] No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property, for value and without notice of the trust.

§ 282. PURPOSES OF TRUSTS.] Express trusts may be created for any of the following purposes:

One—To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

Two—To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

Three—To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of title two of this part; or,

Four—To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

§ 283. A TRUST POWER.] A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust.

§ 284. LIABILITY OF SURPLUS.] Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

§ 285. CERTAIN TRUST A POWER.] Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers, contained in title 5 of this part.

§ 286. POWER IN TRUST.] Nothing in this title prevents the creation of a power in trust for any of the purposes for which an express trust may be created.

§ 287. REALTY PASSES.] In every case where a trust is valid as a power in trust, the real property to which the trust relates, remains in or passes by succession to, the persons otherwise entitled, subject to the execution of the trust as a power in trust.

§ 288. ESTATE IN TRUSTEES LIMITED.] Except as hereinafter otherwise provided, every express trust in real property, valid as such, in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

§ 289. CONTINGENT TRUST.] Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

§ 290. LEGAL ESTATE.] The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

§ 291. UNDISPOSED ESTATES.] Where an express trust is created in relation to real property, every estate not embraced in the trust, and not othwise disposed of, is left in the author of the trust, or his successors.

§ 292. LIMITED DISPOSAL.] The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust during his life, or for a term of years, by the instrument creating the trust.

§ 293. GRANT SEPARATE FROM TRUST.] Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust, and in favor of purchasers from such trustee without notice, and for a valuable consideration.

§ 294. NOT SEPARATE.] Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

§ 295. TRUST CEASES.] When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.

POWERS.

§ 296. SPECIFIED ONLY.] Powers, in relation to real property, are those only which are specified in this title.

§ 297. EXCLUSION.] The provisions of this title do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit.

§ 298. DEFINITION.] A power, as the term is used in this title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

§ 299. AUTHOR DEFINED.] The author of a power, as the term is used in this title, is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation.

§ 300. POWERS CLASSED.] Powers are general or special, and beneficial or in trust.

§ 301. GENERAL POWERS.] A power is general when it authorizes the alienation or incumbrance of a fee in the property embraced therein, by grant, will or charge, or any of them, in favor of any person whatever.

§ 302. SPECIAL.] A power is special:

1. When a person or class of persons is designated, to whom the disposition of property under the power is to be made; or,

2. When it authorizes the alienation or incumbrance, by means of a grant, will, or charge, of only an estate less than a fee.

§ 303. BENEFICIAL] A power is beneficial when no person other than its holder has, by the terms of its creation, any interest in its execution.

§ 304. POWER IN TRUST.] A power is in trust when any person or class of persons, other than its holder, has, by the terms of its creation, an interest in its execution.

§ 305. GENERAL—SAME.] A general power is in trust when any person or class of persons, other than its holder, is designated as entitled to the proceeds of the disposition or charge authorized by the power, or to any portion of the proceeds or other benefits to result from its execution.

§ 306. SPECIAL—SAME.] A special power is in trust:

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power; or,

2. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power.

§ 307. CAPACITY TO CREATE.] No person is capable of creating a power who is not at the same time capable of granting some estate in the property to which the power relates.

§ 308. VESTS IN WHOM.] A power may be vested in any person.

§ 309. HOW CREATED.] A power may be created only:

1. By a suitable clause contained in a grant of some estate in the real property to which the power relates, or in an agreement to execute such a grant; or,

2. By a devise contained in a will.

§ 310. RESERVED POWER.] The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this title in the same manner as if granted to another.

§ 311. IRREVOCABLE UNLESS.] Every power, beneficial or in trust, is irrevocable unless an authority to revoke it is given or reserved in the instrument creating the power.

§ 312. LIEN OF POWER DEFINED.] A power is a lien upon the real property which it embraces from the time the instrument in which it is contained takes effect; except that against creditors, purchasers and incumbrancers, in good faith and without notice, from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.

§ 313. POWER A SECURITY.] Where a power to sell real property is given to a mortgagee, or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

§ 314. CAPACITY LACKING.] A power cannot be executed by any person not capable of disposing of real property.

§ 315. MARRIED WOMAN.] A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

§ 316. SAME—ACKNOWLEDGMENT] No power can be executed by a married woman before she attains her majority, nor without being acknowledged by her in the manner prescribed by the chapter on recording transfers.

§ 317. EXECUTION OF POWER.] A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

§ 318. MANY—SURVIVOR.] Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

§ 319. EXECUTION BY WILL.] Where a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of the title on wills.

§ 320. SAME-BY GRANT.] Where a power is confined to a disposition by grant, it cannot be executed by will, even though the disposition is not intended to take effect until after the death of the person executing the power.

§ 321. PECULIAR EXECUTION.] Where the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this title.

§ 322. FORMALITIES—SURPLUSAGE.] Where the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power.

§ 323. TRIVIAL CONDITIONS.] Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

§ 324. BINDING CONDITIONS.] With the exceptions contained in the preceding sections, the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 333 and 357.

§ 325. CONSENT HOW EXPRESSED.] When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed, or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate, must be subscribed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, according to the chapter on recording transfers.

§ 326. CONSENT OF ALL SURVIVORS.] Where the consent of several persons to the execution of a power is requisite, all must consent thereto; but, in case any one or more of them is dead, the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power.

§ 327. VALIDITY WITHOUT RECITAL.] Every instrument executed by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

§ 328. CONVEYANCES, EXCEPT WILL.] Every instrument except a will, in execution of a power, even though the power is one of revocation only, is to be deemed a conveyance within the meaning of the chapter on recording transfers.

§ 329. VALID TO EXTEND POWER.] A disposition of charge, by virtue of a power, more extensive than was authorized thereby, is not therefore void; but every estate or interest so created, so far as it is embraced by the terms of the power, is valid.

§ 330. TIME RUNS FROM.] The period during which the absolute right of alienation may be suspended by an instrument in execution of a power, must be computed, not from the date of the instrument, but from the time of the creation of the power.

§ 331. LEGALITY OF ESTATE.] No estate or interest can be given or limited to any person, by an instrument in execution of a power, which could not have been given or limited at the time of the creation of the power.

§ 332. MARRIED WOMAN'S POWER.] When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

§ 333. RELIEF FROM DEFECTS.] Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner.

§ 334. FRAUD.] Instruments in execution of a power are effected by fraud in the same manner as like instruments executed by owners or trustees.

§ 335. POWER TO WOMAN.] A general and beneficial power is valid, which gives to a married woman power to dispose, during her marriage, and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee.

§ 336. POWER BECOMES DUE.] Where an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed, or the property should not be sold for the satisfaction of debts.

§ 337. SAME.] Where an absolute power of disposition, not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers and incumbrancers.

§ 338. SAME.] In all cases where an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee.

§ 339. SAME.] Where a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition, within the meaning of the last three sections.

§ 340. POWER ABSOLUTE.] Every power of disposition is deemed absolute, by means of which the holder is enabled in his lifetime to dispose of the entire fee, in possession or in expectancy, for his own benefit.

§ 341. SAME RESERVED.] Where the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

§ 342. VALID BENEFICIAL POWER.] A special and beneficial power is valid which is granted:

One—To a married woman to dispose, during the marriage, of any estate less than a fee, belonging to her, in the property to which the power relates; or, Two—To the owner of a life estate in the property embraced in the power to make leases, commencing in possession during his life.

§ 343. POWERS TO LEASE] A special and beneficial power to make leases of agricultural land for more than ten years, or of town or city lots for more than twenty years, is void only as to the time beyond ten or twenty years, and authorizes leases for those terms or less.

§ 344. ANNEXED TO ESTATE] The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate, and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant, it is extinguished.

§ 345. EXTINGUISHING GRANT.] The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property, and is thereupon extinguished.

§ 346. MORTGAGE BINDS POWER] A mortgage executed by the owner of a life estate having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein.

§ 347. EFFECTS OF SAME] The effects on the power, of a lien by mortgage, such as is mentioned in the last section, are:

1. That the mortgagee is entitled to an execution of the power, so far as the satisfaction of his lien may require it; and,

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

§ 348. CREDITOR'S CLAIMS.] Every special and beneficial power is liable to the claims of creditors, in the same manner as other interests that cannot be reached by execution, and the execution of the power may be adjudged for the benefit of the creditors entitled.

§ 349. OTHER POWERS VOID.] No beneficial power, general or special, not already specified and defined in this title, can hereafter be created.

§ 350. ENFORCEABLE POWERS.] Every trust power, unless its execution is made expressly to depend on the will of the trustee, is imperative, and imposes a duty on the trustee the performance of which may be compelled for the benefit of the parties interested.

§ 351. SAME.] A trust power does not cease to be imperative where the trustee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

§ 352. EQUAL SHARES.] Where a disposition under a power is directed to be made to, among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled in equal proportion.

§ 353. DISCRETIONARY POWER.] Where the terms of a power import that the estate or fund is to be distributed among several persons designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

§ 354. DEATH OF TRUSTEE.] If the trustee of a power, with the right of selection, dies, leaving the power unexecuted, its execution must be adjudged for the benefit equally of all the persons designated as objects of the trust.

§ 355. DISTRICT COURT.] Where a power in trust is created by will, and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district court.

§ 356. CREDITORS.] The execution, in whole or in part, of any trust power, may be adjudged for the benefit of the creditors or assignees of any person entitled, as one of the beneficiaries of the trust, to compel its execution, when his interest is transferable.

§ 357. DEFECTS CURED.] Where the execution of a power in trust is defective, in whole or in part, under the provisions of this title, its proper execution may be adjudged in favor of the persons designated as the objects of the trust.

§ 358. CERTAIN LAW APPLIES.] The provisions of the title on trust, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees; the provisions of the title on succession, devolving express trusts upon the court on the death of the trustee; and the provisions of section 295, in title on uses and trusts, apply equally to power, in trust, and the trustees of such powers.

PART 3.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. Personal Property in General.
II. Particular Kinds of Personal Property.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

§ 359. FOLLOWS DOMICILE.] If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. Things in action.
II. Shipping.
III. Corporations.
IV. Products of the mind.
V. Other kinds of personal property.

CHAPTER I

THINGS IN ACTION.

§ 360. DEFINITION.] A thing in action is a right to recover money or other personal property, by a judicial proceeding.

§ 361. TRANSFERABLE.] A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided by law, it passes to his devisees or successor in office.

CHAPTER II.

SHIPPING.

ARTICLE I. General Provisions.
II. Rules of Navigation.

ARTICLE I.—GENERAL PROVISIONS.

§ 362. SHIP DEFINED.] The term "ship," or "shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

§ 363. APPURTENANCES.] All things belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

§ 364. NAVIGATION CLASSED.] Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation when passing from place to place within the United States

§ 365. DOMESTIC AND FOREIGN SHIPS.] A ship in a port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship.

§ 366. COURT POWER.] If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

§ 367. POSSESSOR DIABLE.] If the owner of a ship commits its possession and navigation to another, that other and not the owner, is responsible for its repairs and supplies.

§ 368. CONGRESS REGULATES.] The registry, enrollment, and license of ships, are regulated by acts of congress.

ARTICLE II.—RULES OF NAVIGATION.

§ 369. MEETING SHIPS—LIMITATION] In the case of ships meeting, the following rules must be observed in addition to those prescribed by any statutes of this territory, which relate to navigation:

One—Whenever any ship, proceeding in one direction, meets another ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation.

Two—A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of that fair way or mid-channel which lies on the starboard side of the steamer. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side.

Three—When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, or other matters prescribed under authority of any act of congress.

§ 370. INFRINGEMENT—DAMAGES.] If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 371. DEFAULT PRESUMED.] Damage to person or property arising from the failure of a ship to observe any rule of section 369, must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 372. LIABILITY DEFINED.] Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault, he must bear his own loss, and compensate the other for any loss he has sustained.

2. If neither was in fault, the loss must be borne by him on whom it falls.

3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,

4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

CORPORATIONS.

ARTICLE I. The Creation of Corporations.
II. Corporate Stock.
III. Corporate Powers.
IV. Corporate Records.
V. Dissolution of Corporations.
VI. Assessments of Stock.
VII. Judgment and Sale of Franchise.
VIII. Examination of Corporations.
IX. Railroad Corporations.
X. Wagon Roads.
XI. Insurance Corporations.

XII. Mining, Manufacturing, &c.
XIII. Bridge Corporations.
XIV. Religious, Education, &c.
XV. Agricultural Fair.
XVI. Existing Corporations.
XVII. Foreign Corporations.

ARTICLE I.—THE CREATION OF CORPORATIONS.

§ 373. DEFINITION.] A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

§ 374. CREATED BY STATUTE.] A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations.

§ 375. RESERVED POWER.] Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature.

§ 376. INQUIRY, HOW MADE.] The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had, and action brought, at the suit of the territory, in the manner prescribed in the code of civil procedure.

§ 377. NAME REQUIRED.] Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended.

§ 378. CLASSED.] Corporations are either:

1. Public; or,
2. Private.

§ 379. PUBLIC—HOW REGULATED.] Public corporations are formed or organized for the government of a portion of the territory. Such corporations are regulated by the political code, or by local statute.

§ 380. PRIVATE PURPOSES.] Private corporations are formed for the purposes of religion, benevolence, education, art, literature, or profit; and all corporations not public, are private.

§ 381. ARTICLES—OFFICERS.] The instrument by which a private corporation is formed is called "articles of incorporation," or "certificate of incorporation." And one-third of the officers of such corporation shall be residents of this territory.

§ 382. ACCEPTANCE ABSOLUTE.] In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.

§ 383. HOW PROVED.] Except when otherwise expressly provided, the acceptance of a grant of corporate authority may be proved like any other fact.

§ 384. PRIVATE LIMITED.] Private corporations can be formed by the voluntary association of any three or more persons, and only as provided in this chapter. The legislative assembly cannot grant private charters or especial privileges, but they may by general incorporation acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith—or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, and for such other purposes as congress may hereafter authorize. [Section 1889 of revised statutes of United States]

§ 385. RELIGIOUS LIMITED] No corporation or association for religious or charitable purposes shall acquire or hold real estate in this territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporations or associations contrary hereto, shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section. [Section 1890, revised statutes of the United States.]

§ 386. CONTENTS OF ARTICLES] Articles of incorporation must be prepared setting forth:

One—The name of the corporation.

Two—The purpose for which it is formed.

Three—The place where its principal business is to be transacted.

Four—The term for which it is to exist.

Five—The number of its directors or trustees, and the names and residences of such of them who are to serve until the election of such officers, and their qualifications.

Six—If there be a capital stock, its amount, and the number of shares into which it is divided.

§ 387. RAILROAD AND WAGON ROAD.] The articles of incorporation of any railroad or wagon road must also state:

One—The kind of road intended to be constructed.

Two—The place from and to which it is intended to be run, and all the intermediate branches.

Three—The counties through which it is intended to be run.

Four—The estimated length and cost of the road.

§ 388. THREE RESIDENTS.] The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this territory, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

§ 389. SECRETARY'S CERTIFICATE.] Upon filing the articles of incorporation with the secretary of the territory, the secretary of the territory must issue to the corporation over the great seal of the territory, a certificate that a copy of the articles containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name and for the purposes stated in the certificate.

§ 390. RECORD BY SECRETARY.] Upon the filing of any articles of incorporation and copy thereof, as in the last section is prescribed, the secretary of the territory must record the same in a book to be kept in his office for that purpose, to be called "the book of corporations," with the date of filing.

§ 391. COPY—EVIDENCE.] A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of the territory, must be received in all courts and other places as prima facie evidence of the facts therein stated, and of the existence of such corporation.

§ 392. DEFINITIONS.] The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

§ 393. LEGAL REPRESENTATIVES.] The shares of stock of an estate of a minor, or insane person, may, at all elections and meetings of a corporation, be represented by his guardian, and of a deceased person by his executor or administrator.

§ 394. MARRIED WOMAN.] Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, in the same manner as if she were a femme sole; and any proxy or power given by her, touching any shares of stock of any corporation owned by her, is valid and binding the same as if she were unmarried.

ARTICLE II.—CORPORATE STOCK.

§ 395. SUBSCRIPTION ENFORCED.] A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation when it is formed, and may be enforced by it.

§ 396. BOOKS OPENED.] After the secretary of the territory issues the certificate of incorporation, as provided in section 389, article I of this chapter, the directors named in the articles of incorporation must proceed in the manner specified, or provided in their by-laws; or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; and to levy assessments and installments thereon, and to collect the same, as in article VI of this chapter assessments of stock are provided to be made.

§ 397. FORFEIT OR RECOVER.] When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both.

§ 398. STOCK, NEGOTIABLE.] 1. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

2. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

§ 399. EXCESS VOID.] A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

§ 400. CORPORATION OWNING STOCK.] Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock, from its surplus profits, or as provided in the article on assessments of stock.

§ 401. DIVIDEND TO WHOM.] A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

ARTICLE III.—CORPORATE POWERS.

§ 402. POWERS CLASSED.] Every corporation, as such, has power:

One—To have succession by its corporate name, for the period limited; and when no period is limited, perpetually.

Two—To sue and be sued; to complain and defend in any court.

Three—To make and use a common seal, and alter the same at pleasure.

Four—To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding, in any case, any amount limited by law.

Five—To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

Six—To make by-laws not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

Seven—To admit stockholders or members, and to sell their stock or shares for the payment of assessments or instalments.

Eight—To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

In addition to the above enumerated powers, and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

§ 403. BY-LAWS—WHO ADOPT.] Every corporation formed under this chapter must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of the United States or of this territory. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

§ 404. SCOPE OF BY-LAWS.] A corporation may, by its by-laws, where no other provision is specially made, provide:

One—The time, place and manner of calling and conducting its meetings.

Two—The number of stockholders or members constituting a quorum.

Three—The mode of voting by proxy.

Four—The time of the annual election for directors, and the mode and manner of giving notice thereof.

Five—The compensation and duties of officers.

Six—The manner of election and the tenure of office of all officers other than the directors; and,

Seven—Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

§ 405. RECORD—CERTIFICATE—REPEAL OF BY-LAWS.] All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as "the book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws, and to adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated the repeal shall not take effect.

§ 406. ELECTION OF DIRECTORS.] 1. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined, as provided in section 403.

2. At the first meeting at which the by-laws are adopted, or at such sub-

sequent meeting as may be then designated, directors must be elected to hold their offices for one year and until their successors are elected and qualified.

3. All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock, or of a majority of the members, is necessary to a choice. If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and also at all elections at other meetings of stockholders.

§ 407. NUMBER AND POWER OF DIRECTORS.] The corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporation. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

§ 408. ORGANIZATION.] Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

§ 409. DIVIDENDS, DEBTS, BAD FAITH, LIMITATIONS AND PENALTY.] The directors of corporations must not make dividends except from the surplus profit arising from the business thereof: nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock except as specially provided by law. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

2. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

§ 410. REMOVAL OF DIRECTORS.] No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it was called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 403, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

§ 411. QUORUM—PROXY.] At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock or of the members, represented either in person, or by proxy, in writing. Every person acting therein, in person, or by proxy, or representative, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members, may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had; such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

§ 412. ELECTION FAILING—ACTION—PLACE OF MEETING—JUSTICE OF PEACE MAY CALL.] If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section 410.

2. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the

district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

3. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

4. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

5. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 413. INDIVIDUAL LIABILITY.] Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred, and such liability is not released by any subsequent transfer of stock. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered.

§ 414. VALID UNCALLED MEETING.] When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 415. NON-RESIDENT STOCK TRANSFERS.] When the shares of stock in a corporation are owned by parties residing out of the territory, the president, secretary and directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate thereof, to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

§ 416. CHANGING AMOUNT OF STOCK.] Every corporation may increase or diminish its capital stock at a meeting called for that purpose, by the directors as follows:

One—Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the territory, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week, for four weeks successively.

Two—The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

Three—At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution, before it can be effected.

Four—A certificate must be signed by the chairman and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

Five—The certificate must be filed in the office of the register of deeds where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of the territory, and thereupon the capital stock shall be so increased or diminished.

Six—The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon such written assent, the directors may proceed to make the certificate herein provided for.

ARTICLE IV.—CORPORATE RECORDS.

§ 417. ENTRIES REQUIRED IN JOURNAL—STOCK BOOK—PUBLICITY.] All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who were absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request the protest of any director, member or stockholder, to any action or proposed action, must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

2. In addition to the records above required to be kept, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; instalments paid or unpaid; assessments levied and paid or unpaid; a statement of every alien-

ation, sale or transfer of stock made, the date thereof, and by and to to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

ARTICLE V.—DISSOLUTION OF CORPORATIONS.

§ 418. INVOLUNTARY—VOLUNTARY, HOW.] A corporation is dissolved:

One—By the expiration of the time limited by its articles of incorporation.

Two—Its involuntary dissolution is provided for in chapter XXVI, of the code of civil procedure.

Three—If voluntary, its dissolution may be effected in the following manner:

1. A corporation may be dissolved by the district court of the county where its office, or principal place of business is situated, upon its voluntary application for that purpose.

2. The application must be in writing, and must set forth:

That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members; and that all claims and demands against the corporation have been satisfied and discharged.

3. The application must be signed by a majority of the board of directors, trustees, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

4. If the court is satisfied that the application is in conformity with this article, it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county.

5. At any time before the expiration of the time of publication, any person may file his objections to the application.

6. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true the court must declare the corporation dissolved.

7. The application, notices and proof of publication, objections, (if any) and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 419. LAPSE BY NON-USER.] If a corporation does not organize and commence the transaction of business, or the construction of its works, within one year from the date of its incorporation, its corporate powers cease.

§ 420. DIRECTORS TRUSTEES ON DISSOLUTION.] Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

§ 421. LIABILITY.] The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation, to the extent of its property in their hands.

§ 422. REVIVAL.] A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE VI.—ASSESSMENTS OF STOCK.

§ 423. LEVIED—WHEN.] The directors of any corporation formed or existing under the laws of this territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

§ 424. LIMITATION OF.] No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 425. NEW ASSESSMENT ONLY.] No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second or third subdivision of section 424.

§ 426. REQUISITES OF ASSESSMENT.] Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 427. FORM OF NOTICE.] Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business).

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of Secretary, with location of office).

§ 428. SERVICE THEREOF.] The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

§ 429. DELINQUENT LEVY.] If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

NOTICE.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any,) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

§ 430. CONTENTS OF NOTICE.] The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificate for such shares have not been issued, must be stated.

§ 431. PUBLICATION.] The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 432. EFFECT OF SAME.] By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs or advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 433. MANNER OF SALE.] On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

§ 434. BIDDER DEFINED.] The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

§ 435. BIDDING IN.] If, at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 436. STOCK HELD BY CORPORATION.] All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders meeting.

§ 437. EXTENDED NOTICE.] The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 438. IRREGULARITIES.] No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous procsedings except the levying of the assessment, are void, and publication must be begun anew.

§ 439. REDEMPTION—LIMITATION.] No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all delinquent assessments which may have been paid thereon, and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 440. PROOF OF NOTICE—SALE.] The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

§ 441. ACTION—OPTION.] On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

ARTICLE VII.—JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

§ 442. FRANCHISE SALABLE—NO EXEMPTION.] For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner and with the same effect as any other property, but without any exemption.

§ 443. CERTIFICATE OF SALE.] The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

§ 444. PURCHASER'S RIGHTS.] The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 445. OTHER POWERS REMAIN.] The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

§ 446. REDEMPTION.] The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with twelve per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 447. WHERE SOLD.] The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated.

ARTICLE VIII.—EXAMINATION OF CORPORATIONS, ETC.

§ 448. POWER OF LEGISLATURE.] The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this territory at all times; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any district court or any judge thereof, under such rules and regulations as the court may prescribe.

§ 449. POWER RESERVED.] The legislative assembly may at any time amend this chapter or any article or section thereof.

ARTICLE IX.—RAILROAD CORPORATIONS.

§ 450. GENERAL POWERS CLASSED.] Every railroad corporation has power and is authorized:

1. To enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold and appropriate so much real property as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such corporation to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains: *Provided*, That the lands so held, taken and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavation, embankments, or depositing waste earth: *And provided further*, That no appropriation of private property, for the use of any corporaton provided for in this article, shall be made, until full compensation therefor be first made or secured to the owners thereof.

2. To lay out, locate, construct, furnish, maintain, operate and enjoy a railroad with single or double tracks, with such side tracks, turn outs, offices and depots as shall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city or village, named as the places of the termini of said road, and construct branches from the main line to other towns or places within the limits of this territory.

3. To carry persons and property on its railroad, and receive tolls or compensation therefor.

§ 451. PURCHASE OR TAKE REALTY.] Any railroad corporation may purchase and use real property for a price to be agreed upon with the owners thereof; or the damages to be paid by such corporation for any real property taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appoinied by the judge of the district court of the county or judicial subdivision, wherein such real estate is situated, in conformity with the provisions of this article.

§ 452. TAKING WHEN OWNER REFUSES—PROCEDURE.] If the owner of any real property over which said railroad corporation may desire to locate its road, shall refuse to grant the right of way through and over his premises, the district judge of the county or subdivision in which said real property may be situated, as provided in this article, shall, upon the application or petition of either party, and after ten days' notice to the opposite party, either by personal service or by leaving a copy thereof at his usual place of residence; or in case of his non-residence in the territory, by such publication in a newspaper as the judge may order, direct the sheriff of said county to summon three disinterested freeholders of said county or subdivision (or if there be none such, then of the territory), as commissioners, who shall be selected by said judge, and who must not be interested in a like question. The commissioners shall be duly sworn to perform their duties impartially and justly; and they shall inspect said real property and consider the injury which such owner may sustain by reason of such railroad; and they shall assess the damages which said owner will sustain by such appropriation of his land; and they shall forthwith make report thereof in writing to the clerk of the said court, setting forth the quantity, boundaries, and value of the property taken, or amount of injury done to the property which they assess to the owner; which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county or subdivision where the land lies, to be by him filed and recorded (without further acknowledgment or proof), in the same manner and with like force and effect as is provided for the record of deeds. And if said corporation shall, at any time before it enters upon said real property for the purpose of constructing said road, pay to said clerk for the use of said owner the sum so assessed and reported to him as aforesaid, it shall thereby be authorized to construct and maintain its road over and across said premises: *Provided*, That, if the corporation shall need or require, for the purpose of constructing said railroad, to take and occupy any real property in any unorganized county or in other unorganized country where there is no district court established, then the judge of the district court of the nearest organized county or subdivision (wherein such court is established), upon the line of said road, shall appoint commissioners to assess said damages; and he and they shall perform all other duties required of district judges and commissioners by the terms of this article, and either party shall have the right to appeal as in other cases herein provided: *And provided further*, That the report of the commissioners may be reviewed by the district court, on written exceptions filed by either party, in the clerk's office, within sixty days after the filing of such report: and the court shall take such order therein as right and justice may require, either by confirming, modifying, or rejecting the same, or by ordering a new appraisement, on good cause shown: *And provided further*, That either party may appeal from the decision of the district court to the supreme court, and the money so deposited shall remain in the hands of the clerk, as aforesaid, until a final decision be had and subject thereto. But such review or appeal shall not delay the prosecution of the work on said railroad over the premises in question, if such corporation shall first have paid or deposited with said clerk the amount so assessed by said commissioners; and in no case shall said corporation be liable for the costs on such review or appeal, unless the owner of such real property shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by said commissioners. The corporation shall, in all cases, pay the costs and expenses of the first assessment. And in case of review or appeal, the final decision may be transmitted by the clerk of the proper court, duly certified, to the proper register of deeds, to be by him filed and recorded as hereinbefore provided for the recording of the report, and with like effect.

§ 453. COMMISSIONERS ACT IN ALL CASES—VACANCIES.] Freeholders so appointed shall be the commissioners to assess all the damages to the owners of real property in said county or subdivision; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county or subdivision to grant the right of way as aforesaid, by giving said owner or guardian ten days' notice thereof in the manner prescribed in the preceding section, have the damages assessed in the manner hereinbefore prescribed. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the sheriff shall, upon the selection of the district judge summon other freeholders to complete the panel, and said commissioners shall receive three dollars per day, each, for their services, and the same shall be taxed in the bill of costs.

§ 454. GUARDIANS—MARRIED WOMEN.] Whenever any railroad corporation shall take any real property as aforesaid, of any minor, any person insane or otherwise incompetent, or of any married woman whose husband is under guardianship, the guardian of such minor, insane or incompetent person, or, such married woman with the guardian of her husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real property and may give valid releases and discharges therefor upon the approval thereof by the judge of the probate court.

§ 455. UNKNOWN OWNER.] If upon the location of said railroad it shall be found to run through the real property of any non-resident owner who is unknown to the corporation, or who has not been by it informed thereof, and has neither granted nor refused to grant the right of way through and over his said premises, the said corporation may give four weeks' notice to such owner, if known, and if not known, by a description of such real property by publication four consecutive weeks in some newspaper published in the county or subdivision where such real property may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through and over his lands; and if said owner do not, within thirty days thereafter, apply to the district judge to have the damages assessed in the mode prescribed in this article, said corporation may proceed to have the damages assessed, as hereinbefore provided, subject to the same right of review and appeal, as in case of resident owners; and upon payment of damages assessed to the clerk of the district court, the corporation shall acquire all the rights and privileges mentioned in this article.

§ 456. CLAIMANTS ON PUBLIC LANDS.] Any railroad corporation is authorized to pass over, occupy and enjoy all the public lands, to the extent and in the manner prescribed by the act of congress approved March 3, 1875: *Provided*, That the damages accruing to any occupant or possessory claimant or other person who may reside on or have improvements upon said public land, shall be determined and paid by said railroad corporation as provided in this article for owners of private lands.

§ 457. HIGHWAYS, CANALS, &C.] Any railroad corporation may locate, construct and operate its railroad across, over, or under any road, highway, railroad, canal, stream, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct its railroad crossings as not unnecessarily to impede the travel, transportation or navigation upon the road, highway, railroad, canal, stream, or water course so crossed. Said corporation shall have the right to change the channel of any stream or water course from its present location or bed, whenever it may be necessary in the location, construction, or use of its said road: *Provided*, Such change do not alter its general course or materially impair its former usefulness.

§ 458. CHANGE OF LINE OR GRADE.] Whenever any railroad corporation shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of its road, such railroad corporation shall be and is hereby authorized to make such changes of grade and location, not departing from its general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such corporation shall have all the rights, powers and privileges to enter upon and appropriate such real property, and make surveys necessary to effect such changes and grades, upon the same terms, and subject to the same obligations, rules and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change to the owner of real property upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner residing on the premises, or, if non-resident, notice by such publication in some newspaper in general circulation, as the district judge may order.

§ 459. PUBLIC GROUNDS—STREETS.] If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer or public authorities, owning or having charge thereof, and the railroad corporation, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad corporation, to use or occupy such road, street, alley, or other public way or ground, such corporation may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided in this article for the appropriation of the property of individuals.

§ 460. RAILROAD JUNCTIONS—CROSSINGS.] Every railroad corporation shall have power to cross, intersect, join and unite its railroad with any other railroad before constructed at any point on its route and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. And every corporation whose railroad is or shall hereafter be intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersection and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be selected as provided in this article in respect to taking of lands.

§ 461. UNION OF LINES.] Railroad corporations shall have power to intersect, join and unite their respective railroads, constructed or to be constructed in this territory, or in adjoining states and territories, at such point on the boundary line of each, or at such other point as may be mutually agreed upon by said corporations. And such railroads are authorized to merge and consolidate the stock of the respective corporations, making one joint stock corporation of the railroads thus connected, upon such terms as may be agreed upon in accordance with the laws of the adjoining state or territory with whose road or roads connections are thus formed: *Provided*, That the consent thereto of three-fourths of all the stockholders in amount in any road whose stock is proposed to be consolidated shall first be obtained.

§ 462. EXTENSION BEYOND TERRITORY.] Every railroad corporation is empowered to extend its road into or through any other state or territory, under such regulations as may be prescribed by the laws of such state or territory through which said road may be extended; and the rights and privileges over said extension, in the construction and use of said railroad for the benefit of said corporation, and in controlling and applying the assets of said corporation, shall be the same as if its railroad had been constructed wholly within this territory.

§ 463. MUTUAL CONTRACTS.] Every railroad corporation which may have constructed or commenced the construction of its road so as to meet and connect with any other railroad in an adjoining state or territory, at the boundary line of this territory, shall have the power to make such contracts and agreements with any such road constructed in an adjoining state or territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

§ 464. MORTGAGE BONDS—LIMITATION.] Every railroad corporation shall have power to mortgage or execute deeds of trust of the whole or any part of its property and franchises, including any lands or other property granted to said corporation by the United States, to secure money borrowed by it for the construction and equipment of its road, and may issue its corporate bonds in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise; and if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent. per annum, and convertible into stocks, and may sell them at such rates or prices as it may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and binding upon the corporation, and no plea of usury shall be put in by or allowed in behalf of said corporation in any action or proceedings upon the same; the principal and interest upon said bonds, or either of them, may be made payable within or without this territory.

§ 465. LIEN—SALE.] Such corporation shall have power to borrow money on the credit of the corporation and may execute bonds or promissory notes therefor, and to secure the payment thereof, may pledge the property and income on such corporation. Any mortgage or deed of trust made upon the lands, road or other property of railroad corporation, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock; and the purchaser under foreclosure of such mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale: *Provided*, That nothing contained in this article shall be so construed as in any manner to interfere with, change or modify the rights of this territory or the United States, to any lands granted by congress to this territory or to said corporations or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States or this territory.

§ 466. COVER FUTURE ASSETS.] Said mortgages or deeds of trust may by their terms include and cover not only the property of the corporations making them at the time of their date, but property, both real and personal, which may thereafter be acquired by them, together with all the material and property necessary for the use and operation of said roads, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

§ 467. RECORD—EFFECT OF.] Said mortgages or deeds of trust shall be recorded in the office of the register of deeds of each organized county through which said road mortgaged or deeded may run in this territory, or wherever it may hold lands included in said mortgages or deeds of trust, and shall be a notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property, and material necessary for operating the road of said corporation, belonging to said road and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded shall have the same effect, both as to notice and otherwise, as to the real estate covered by them.

§ 468. CONSOLIDATION—METHOD OF.] Whenever the lines of railroad of any railroad corporations in this territory, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such corporations are hereby authorized to consolidate themselves into a single corporation, in the following manner: The directors of the said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the directors thereof, which shall not be less than seven; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations, into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations, together with such other statements as may be required in the premises by sections 392 and 393 of this code; and when such corporations shall have complied with all the other requisites for the creation of corporations prescribed in article I of this chapter, and other provisions of law; then such new or consolidated corporation shall retain and possess all the powers, rights and franchises originally conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this chapter: *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid the market value of said stock at the date of such consolidation.

§ 469. STOCKHOLDERS CONSENT REQUIRED.] Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it shall have been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known, and deposited in the post office, and published at least for six successive weeks, in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business; and has been sanctioned by such stockholders by the vote of at least two-thirds in the amount of the stock represented at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

§ 470. FILING AGREEMENT.] Upon making the agreement and the statements mentioned in the last two sections, in the manner required therein, and filing the same as required by section 389, the said two or more corporations, mentioned or referred to in the last two preceding sections, shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

§ 471. SUCCESSORS TO PROPERTY, &c.] Upon the election of the first board of directors of the corporation created by the agreement in the preceding section mentioned, and by the provisions of this article, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the rights and interests in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to, and vested in such new corporation, without any other deed or transfer. And such new corporation shall hold and enjoy the same together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties of agreement, should have continued to retain the title and transact the business of such corporations. And the titles, and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this article contained: *Provided*, That all rights of creditors, and all liens upon the property of either of said corporations, shall be, and hereby are preserved unimpaired; and the respective corporations shall continue to exist as far as may be necessary to enforce the same: *And provided further*, That all debts, liabilities and duties of either corporation shall henceforth attach to such new corporation and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

§ 472. OBLIGATIONS.] When any two or more railroad corporations shall have been consolidated, as contemplated by the provisions of this article, such corporations so consolidated, shall keep each and every railroad line that may come into its possession by such consolidation, in good running order, with sufficient rolling stock to transport the freight and passengers. They shall not discriminate against business of either or any of said railroad lines, either directly or indirectly, by the detention of freight or passengers.

§ 473. AID TO OTHER CORPORATION—REPORTS.] Any railroad corporation may, at any time by means of subscription to the capital stock of any other corporation, or otherwise, aid such other corporation in the construction of its railroad, for the purpose of forming a connection of said last mentioned road with the road owned by the corporation furnishing such aid; or any railroad corporation existing in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other corporation, if said corporation's lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said corporations respectively; or any two or more railroad corporations whose lines are so connected, may enter into an agreement for their common benefit consistent with, and calculated to promote the objects for which they were created; *Provided*, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said corporations shall have been called by the directors thereof, at such time and place, and in manner as they shall designate, and the holders of at least two-thirds of the stock of such corporation represented at such meeting, either in person or by proxy, and voting thereat, shall have assented thereto. Every railroad corporation shall annually on or before the first day of February make, upon the oath of its president, secretary or treasurer, a full report of the condition of its affairs, for the previous year ending the thirty-first day of December, to the auditor of the territory, embracing and showing:

1. The capital stock, and the amount thereof actually paid in.
2. The amount and nature of its indebtedness, and the amounts due the corporation.
3. The amount expended for the purchase of lands, for the construction of the road, for buildings, and for engines and cars respectively.
4. The amounts received from the transportation of passengers, property, mails, and express matter, and from other sources.
5. The amount of freight, specifying the quantity in tons.
6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running said road.
7. The number and amount of dividends, and when paid; and the amount of profits.

A copy of such report must also, at the same time and by the corporation, be published in a newspaper printed in the county in which the main office of the corporation is situated, or at the capital of the territory; and the territorial auditor must incorporate such report in his biennial report to the governor.

§ 474. RUNNING RULES.] Every such railroad corporation shall start and run its cars, for the transporation of persons or property, at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer, or be offered, for transportation at the place of starting, or at the junction of other railroads, and at siding and stopping places established for receiving and discharging way passengers and freight, and shall take, transport, and discharge passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

§ 475. VIOLATION—PENALTY.] In case of the refusal by such corporation or its agents to take or transport any passenger or property as provided in the preceding section; or in case of the neglect or refusal of such corporation or its agents to discharge or deliver passengers or property at the regularly appointed place, under the laws which regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of action.

§ 476. PERSONAL INJURIES.] In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation posted up at the time in a conspicuous place inside of its passenger cars then in the train, such corporation shall not be liable for the injury: *Provided*, It had furnished room inside its passenger cars sufficient for the accommodation of its passengers.

§ 477. FARE IMPOSES DUTY.] When fare is taken by any railroad corporation for transporting passengers on any mixed train of passenger and freight cars, or on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility and duties are assumed by the corporation as for passengers on passenger cars.

§ 478. CHANGING HIGHWAY.] Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having its railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road or other way, as soon as may be, in good repair.

§ 479. TEMPORARY WAYS.] Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide and keep in good order, suitable temporary ways to enable travelers to avoid or pass such obstructions.

§ 480. BRIDGE REPAIRS.] Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling its road to pass over or under any turnpike road, canal, water-course or other way.

§ 481. SIGNS AT CROSSINGS.] Every railroad corporation operating a line of road within this territory, must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be painted with black roman or block letters, on white back-ground, "railroad crossing, look out for the cars;" said letters to be at least eight inches in length and proportionately broad: said signs shall be placed at the top of posts at least fifteen feet high.

§ 482. NEGLECT OF SAME.] In case any railroad corporation shall refuse or neglect, for the space of thirty days after notice given by the board of county commissioners to comply with the provisions of the preceding section, it shall become the duty of the county commissioners of each county through which any such railroad shall be in operation, to erect such signs, and the company shall be liable for all expenses so incurred by said commissioners.

§ 483. BELL AND WHISTLE.] A bell at least thirty pounds weight or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this territory, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

§ 484. CAUSEWAY.] When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other safe and adequate means of crossing the same.

§ 485. FARE REFUSED.] If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, in the manner prescribed in section 1292. (See also sections 1284 to 1294 of this code).

ARTICLE X.—OF WAGON ROADS.

§ 486. LAID OUT—HOW.] Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of commissioners of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the board of commissioners of the county as provided in the succeeding section.

§ 487. MAP FILED—RECORD OF APPROVAL—EFFECT.] When the route is surveyed a map thereof must be submitted to and filed with the board of commissioners of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the board of county commissioners must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of county commissioners must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road and its toll gates, as not to hinder or obstruct the use of the same.

§ 488. BRIDGES AND FERRIES—TOLLS.] All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of commissioners of the proper county through which the road passes, or in which the ferry or bridge is situate, subject, however, to the limitation of rates for ferriage prescribed in the general law upon ferries; but in no case must the tolls be more than sufficient to pay fifteen per cent. per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges and ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

§ 489. PUBLIC HIGHWAYS USED.] When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

§ 490. TOLL RATES POSTED.] The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

§ 491. TOLLS REQUIRED.] Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

§ 492. TOLL GATHERER'S DUTY—PENALTY.] Every toll gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense, forfeits the sum of twenty-five dollars to the person aggrieved.

§ 493. PASSING GATE.] Every person who, to avoid the payment of the legal toll, with his team, vehicle or horse, turns out of a wagon, turnpike or plank road, or passes any gate thereon on the ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

§ 494. INJURING ROAD.] Every person who:

1. Willfully breaks, cuts down, defaces or injures any mile-stone or post on any wagon, turnpike, or plank road; or,

2. Willfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road, or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

§ 495. REVENUE APPLIED.] The entire revenue from the road shall be appropriated:

First—To repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and,

Second—To the payment of the dividend among its stockholders, as provided in section 488. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay a dividend of twelve per cent. per annum, and incidental expenses, and to keep the road in good repair.

§ 496. MORTGAGE—CONDITIONS.] The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent. of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two-thirds of the capital stock subscribed.

§ 497. NATURAL PERSON LIKE CORPORATION.] When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person this article is applicable to such person in like manner as it is applicable to corporations.

ARTICLE XI.—INSURANCE CORPORATIONS.

§ 498. STATEMENT REQUIRED.] Every insurance corporation incorporated under the laws of this territory, shall file with the secretary of the territory, within forty days after its incorporation, a full and specific statement of the amount of cash paid in upon its stock; the amount of stock not paid for in cash, the amount secured by mortgages or pledges of real property; the names and residences of the stockholders in said corporation, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security; also, set opposite the name of each the names of all the officers and agents of the corporation, wherever residing; the amount of policies issued by, and outstanding against the corporation at the date of said report; the amount of premiums received by said corporation during its existence; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real property owned by said corporation, where held and owned, and in what manner such real property became vested in said corporation; which report and statement shall be verified by the oath of the president, and secretary of the corporation.

§ 499. SEMI-ANNUAL REPORT — CONTENTS.] Every insurance corporation created under the laws of this territory, shall file a semi-annual statement of the affairs of said corporation with the auditor of the territory on the first day of January and July in each year, or within ten days thereafter, which statement shall be verified by the oath of the secretary or other officer of such corporation. Such statement shall contain:

First—The name and locality of the corporation.

Second—The amount of capital stock of said corporation.

Third—The amount of its capital stock paid up.

Fourth—The assets of the corporation, including:

1. The amount of cash on hand.
2. The amount of cash in hands of agents.
3. The real estate unincumbered.
4. The bonds and notes of the corporation, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for bona fide loans.
5. Debts of the corporation secured by mortgages.
6. Debts otherwise secured.
7. Debts for premiums.
8. All other securities.

Fifth—The amount of liabilities due or not due to banks or other creditors of the corporation.

Sixth—Losses adjusted and due.

Seventh—Losses adjusted and not due.

Eighth—Losses unadjusted.

Ninth—Losses in suspense.

Tenth—All other claims against the corporation.

Eleventh—The greatest amount insured by any one risk.

And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the territory, and such corporation shall pay for said publication.

§ 500. PENALTY FOR REFUSAL.] A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any corporation, each, individually, to the penalty of one hundred dollars, to be recovered in an action at law in the name of any citizen of the territory, one-half of the same to the use of the territory, and the other moiety to the use of the informer.

§ 501. OWNERSHIP OF REALTY LIMITED.] It is declared unlawful for any insurance corporation in this territory to purchase or hold any real property, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said corporation for any other purposes, are hereby declared to be void.

§ 502. AGENT'S CERTIFICATE—CONTENTS.] It shall not be lawful for any agent or agents of any insurance corporation, incorporated by any other state or territory, directly or indirectly to take risks or transact any business of insurance in this territory, without first procuring a certificate from the auditor of the territory, and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement under the oath of the president or secretary of the corporation for which he or they may act, which statement shall show:

First—The name and locality of the corporation.

Second—The amount of its capital stock.

Third—The amount of its capital stock paid up.

Fourth—The assets of the corporation, including:

1. The amount of cash on hand, and in the hands of agents or other persons.
2. The real property unincumbered.
3. The bonds and notes owned by the corporation, and how they are secured, with the rate of interest thereon.
4. The debts of the corporation secured by mortgage.
5. Debts otherwise secured.
6. Debts for premiums.
7. All other securities.

Fifth—The amount of liabilities due or not due to banks or other creditors of the corporation.

Sixth—Losses adjusted and due.

Seventh—Losses adjusted and not due.

Eighth—Losses unadjusted.

Ninth—Losses in suspense, waiting for further proof.

Tenth—All other claims against the corporation.

Eleventh—The greatest amount insured by any one risk.

Twelfth—The greatest amount allowed by the rules of the corporation to be insured in any one city, town or village.

Thirteenth—The greatest amount allowed to be insured in any one block.

Fourteenth—The act of incorporation of such corporation.

Which statement shall be filled in the office of said auditor, together with a written instrument under the seal of the corporation, signed by the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the corporation, according to the laws of the territory, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance corporation or agents of any insurance corporation, incorporated by any other state or territory, shall transact any business of insurance in this territory, unless such corporation is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real property worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the territory, and furnishing him with satisfactory evidence of such instrument as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the corporation

§ 503. FOREIGN INSURANCE—SAME.] It shall be unlawful for any corporation or association, partnership, firm or individual, or any member or agent thereof, or for any agent of any corporation incorporated by any foreign government other than a state of this Union, to transact any business of insurance in this territory without procuring a certificate of authority from the auditor of this territory; such corporation, association, partnership, firm or individual, or any agent thereof, having first filed, under oath, in the office of said auditor, a statement setting forth the charter or articles of incorporation of any and every such corporation, and the by-laws, copartnership agreement and articles of association of any and every such unincorporated company, association, partnership or firm; and the name and residence of such individual, and the names and residences of the members of every such partnership or firm; and the matters required to be specified by the provisions of this article, and the written authority therein mentioned, and furnish evidence, to the satisfaction of the auditor of the territory, that said company has invested in stocks of some one or more of the states of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States, or in bonds or mortgages of real property situated within the United States, fully securing the amount for which the same is mortgaged, or bonds of cities of the United States, the aggregate market value of the investment of the company in which shall not be less than one hundred thousand dollars; and such corporation or unincorporated company, association, partnership, firm or individual, or any agent thereof, filing said statement and furnishing evidence of investment, as aforesaid, shall be entitled to a certificate of authority for such body or individual, in like manner as is provided in this article.

§ 504. SAME ANNUALLY.] The statement and evidences of investment required by this article, shall be renewed annually in the month of January of each year. The auditor of the territory, upon being satisfied that the capital, securities and investments remain secure, shall furnish a renewal of certificates as aforesaid; and the company or agent obtaining such certificate, shall file the same, together with the statement upon which it was obtained or renewed, in the office of the auditor of the territory.

§ 505. AGENCY DEFINED.] Any person or firm in this territory who shall receive or receipt for any money, on account of or for any contract of insurance made by him or them, or for any such insurance corporation, company, or individual aforesaid, or who shall receive or receipt for money from other persons to be transmitted to any such corporation, company, or individual aforesaid, for a policy of insurance or any renewal thereof, although such policy of insurance may not be signed by him or them as agent or agents of such corporation or company, or who shall in any wise, directly or indirectly, make or cause to be made any contract of insurance, for or on account of such corporation or company aforesaid, shall be deemed, to all intents and purposes, an agent or agents of such corporation, company or individual, and shall be subject and liable to all the provisions of this article.

§ 506. COPIES EVIDENCE.] Copies of all papers required by this article to be deposited in the office of the auditor, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner, and have the same force and effect as the original would have, if produced.

§ 507. VIOLATION—PENALTY.] Any person violating the provisions of this article shall, upon conviction thereof in the district court, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this article may be prosecuted either by information filed by the district attorney, or by indictment of the grand jury.

§ 508. SINGLE STATEMENT ONLY.] Any insurance corporation complying with the provisions of this article, and securing the certificate of the auditor for any of its agents, shall not be required to furnish the single statement, and evidences required hereby, for more than one of such agents, which being filed with the auditor, shall be deemed a sufficient compliance for its free transaction of business in this territory.

§ 509. MUTUAL INSURANCE.] Every mutual insurance corporation incorporated by any state or territory, other than Dakota, upon filing in the office of the auditor its articles of incorporation, together with a written instrument, under seal of said corporation, signed by the president and secretary thereof, under oath, certifying that said corporation is possessed of a capital of at least one hundred thousand dollars, secured by lien on real property, worth, at cash valuation, at least five times the amount of said capital, and not encumbered to more than one-fourth of said cash valuation, shall be entitled to a certificate from said auditor, with authority to transact business of insurance in this territory, and said corporation shall be exempt from the provisions of this article, with the exception of the publication of the statement and certificate of the auditor.

§ 510. FILING AND PUBLICATION OF CERTIFICATE.] It shall be the duty of any agent in either of the foregoing sections mentioned, before taking any risks or transacting any business of insurance in this territory, to file in the office of the register of deeds of the county in which he may desire to establish an agency for any such corporation, a copy of the statement required to be filed with the auditor of the territory as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said register, and said statement and certificate shall be published for one week in one daily, or for four weeks in one weekly newspaper printed and published in the county in which such agent has his office of business as such agent; and if no newspaper is published in such county, then such publication shall be made in one weekly newspaper of this territory of most general circulation in such county.

ARTICLE XII.—MINING AND MANUFACTURING CORPORATIONS, ETC.

§ 511. LIMITED TWENTY YEARS.] Corporations for mining, manufacturing and other industrial pursuits, may be formed as provided in this chapter; and such corporations have all the rights, and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

§ 512. LOAN TO STOCKHOLDER FORBIDDEN.] The purposes for which every such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation; and it must not appropriate its funds to any other purpose, nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation be made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan or misappropriation, and interest, for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated.

§ 513. ACCOUNTS—PUBLICITY—STATEMENT.] Regular books of accounts of all the business of such corporations must be kept, which, with the vouchers, shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made, by order of the directors, and laid before the stockholders.

§ 514. LIABILITY FOR LABOR.] The stockholders of any corporation formed for the purposes mentioned in this article, shall be jointly and severally liable, in their individual capacities, for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied: *Provided*, Such action be commenced within four months; *And provided always*, That if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

§ 515. ANNUAL REPORT—CONTENTS.] Every such corporation shall annually, within twenty days from the first day of January, make a report, which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid, and the net amount of profits. The said report must be signed by the president and a majority of the directors, and be verified by the oath of the president or secretary of the corporation, and filed in the office of the register of deeds of the county where the business of the corporation is carried on; and if any such corporation shall fail so to do, the directors shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such report shall be made.

§ 516. DEMAND FOR STATEMENT.] Whenever any person or persons owning twenty per cent. of the capital stock of any corporation formed for the purposes mentioned in this article shall present a written request to the treasurer thereof, that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail, and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglect or refuse to comply with the provisions of this section, he shall forfeit and pay to the person or persons presenting such written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action.

§ 517. MAY HAVE OFFICE ELSEWHERE.] Any corporation formed for the purposes mentioned in this article may provide in the articles of incorporation for having a business office without this territory at any place within the United States, and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this territory must have its main office for the transaction of business within this territory, to be also designated in such articles.

§ 518. FRAUD, RESPONSIBILITY.] If any such corporation shall willfully violate any of the provisions of this chapter relating or applying to such corporation, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute, for all debts contracted after such violation.

§ 519. Ditch corporation—requisites.] In addition to the matters required by section 386, every corporation formed for the purpose of constructing a ditch to convey water to any mines, mills or lands, to be used for mining, manufacturing, milling, or for the irrigation of lands, must in the articles of incorporation, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch as near as may be, and the use to which the said water is intended to be applied.

§ 320. Rights.] Any ditch corporation shall have the right of way over the line named in the articles, and shall also have the right to run the water of the stream or streams named in the articles, through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those granted under this article, and acquired by virtue of such articles of incorporation. Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, millmen, or others, along the line of said stream, who may have a priority of right; and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

§ 521. Duty to furnish water.] Every ditch corporation must furnish water to the class of persons using water in the way and for the purpose for which the articles of incorporation declare the water obtained by the corporation is to be used, whether miners, manufacturers, mill men or farmers, whenever they shall have water in their ditch unsold, and must at all times give the preference to the use of the water in such ditch to the class of persons so named in the articles; and the rates or tolls at which water is to be furnished must be fixed by the board of county commissioners, as soon as such ditch shall be completed and prepared to furnish water.

§ 522. Protection from injury.] Every ditch corporation must keep the banks of its ditch in good condition, so that the water shall not be allowed to escape from it to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to extend or construct any ditch over, across or above, any lode or mining claim, or public highway, the corporation shall, if necessary to keep the water of said ditch out or from any such lode, claim or highway, flume the ditch so far as necessary to protect such claim, property or highway, from the water of such ditch.

§ 523. Flumes—requisites.] In addition to the matters required in section 386, every corporation formed for the purpose of constructing a flume, must in its articles of incorporation, specify as follows: The place of beginning, the termini, and the route so near as may be, and the purpose for which such flume is intended. Such corporation shall have the right of way over the line named in its articles: *Provided*, It does not conflict with the right of any fluming, ditching or other corporation, or with the prior water rights of any person.

§ 524. TUNNELS—SAME.] In addition to the matters required by section 386, every corporation formed for the purpose of running and excavating a tunnel for mining for gold, silver, or other ore, or quartz or coal, must, in the articles of incorporation, specify as follows: Where said tunnel is to be run; the place of commencement; the course and termination; and the metals, minerals or ores designed to be excavated. Through all lodes crossed by such tunnel, such corporation shall have the right of way.

§ 525. ACQUIRING RIGHT OF WAY.] The right of way granted in this article to any ditch, flume or tunnel corporation, may be acquired in the same manner, and by like proceedings as provided for railroad corporations.

§ 526. NON-USER FORFEITS RIGHTS.] Every corporation formed under the provisions of this article must, within ninety days from the date of the issue of its certificate of incorporation, commence the construction of its works or the transaction of its business, and must prosecute the work or business with due diligence until the same is completed; and the time of the completion of its works shall not extend beyond a period of two years from the time work was commenced as aforesaid; and any such corporation failing to commence work within ninety days from the date of its certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other corporation: *Provided*, That this section shall not apply to the construction of any works through or over any grounds owned by such corporation.

ARTICLE XIII.—BRIDGE CORPORATIONS.

§ 528. ARTICLES MUST INCLUDE—FILING.] The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required by section 486, every corporation formed for the purpose of constructing a bridge over any stream of water must, in the articles of incorporation, specify as follows: The place where such bridge is to be built, and over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the consent of the owners of the banks, where the bridge is to be built, to build the bridge; or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained, and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which its bridge or any part thereof is situated or to be located.

§ 529. COUNTY BOARD.] No such corporation shall construct, or take tolls on, a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located.

§ 530. FORFEITURE PROVIDED.] Every such corporation also ceases to be a body corporate:

1. If, within six months from the issue of its certificate by the secretary of the territory, it has not obtained such authority from the board or boards of county commissioners as mentioned in the last section; and if, within one year thereafter, it has not commenced the construction of its bridge and actually expended thereon at least ten per cent. of its capital stock.

2. If, within three years from the issuing of its certificate of incorporation, the bridge be not completed.

§ 531. GOOD CONDITION REQUIRED.] Every bridge coporation must at all times keep the bridge in good and safe condition for travel both night and day, unless it be rendered impassable by reason of floods or high water; and if it be destroyed by fire, or other causes, the corporation must rebuild within a period of one year from such destruction, or its corporate rights shall be forfeited and cease to exist.

§ 532. POSTED TOLL RATES.] Such corporation previous to receiving, and as a precedent condition to the right to receive any toll upon the use of its bridge, must set up and keep in a conspicuous place on the bridge a board on which must be written, painted or printed, in a plain and legible manner, the rates of toll which shall have been prescribed by the board of county commissioners; and if such corporation shall demand or receive any greater rate of toll than the rate so prescribed, it shall be subject to a fine of ten dollars for each offense, to be recovered in an action by the party aggrieved, or by any public officer making the complaint.

§ 533. BAD CONDITION—PENALTY.] No such corporation shall demand or receive toll whenever said bridge is not in good and safe condition for use, and any person having paid toll on such bridge and finding the same in a bad or unsafe condition for loaded wagons or teams, shall have the right to make complaint before any justice of the peace in the county or counties in which the bridge is located, who shall thereupon summon the said corporation, through its toll-gatherer, officers or directors, to appear before him to answer the complaint, within not over five days from the date thereof, and if upon the hearing it be found that the bridge is not in a good and safe condition for use, or is in a bad condition and unsafe for loaded wagons or teams, the justice of the peace must impose a fine not less than ten dollars nor more than fifty dollars, upon such corporation and he must thereupon also enter judgment and issue his order that no toll be collected upon said bridge until it is put in good repair and safe condition.

§ 534. COLLECTION OF TOLL—PENALTY.] Each toll gatherer may prevent from passing through his gate all persons, animals or vehicles subject to toll until he shall have received, respectively, the tolls authorized to be collected; and if he willfully and unreasonably hinder or delay any such persons, animals or vehicles from passing, when the lawful toll has been paid or tendered, he shall forfeit and pay for each offense a sum not less than five dollars nor more than twenty-five dollars, to be recovered in an action by the party aggrieved.

§ 535. UNLAWFUL PASSING.] Every person who forcibly, willfully or fraudulently, passes over any such bridge without having paid or tendered the legal toll for himself, and the property in his charge, shall, for each offense forfeit and pay to the corporation injured a sum not exceeding twenty-five dollars, to be recovered in an action in the name of such corporation.

§ 536. ANNUAL REPORT TO COUNTY BOARD.] The president and secretary of every bridge corporation must annually, within twenty days from the first day of January, report under oath to the board of county commissioners of the county in which the articles of incorporation are filed, specifying as follows: The costs of constructing and providing all necessary appendages and appurtenances of their bridge; the amount of all moneys expended thereon, since its construction, for repairs and incidental expenses; the capital stock, how much paid in and how much actually expended thereof; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made; the indebtedness of the corporation, specifying for what it was incurred; the net amount of profits; and such other facts and particulars respecting the business of the corporation as the board of county commissioners may require.

§ 537. PUBLICATION OF SAME—PENALTY.] Such corporation must cause the report required in the preceding section to be published for four weeks in a newspaper published in the town or city nearest such bridge. A failure to make such report and to publish it as aforesaid, subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county or counties from which the authority to construct and take tolls is derived, at the suit of such county or counties. All such cases must be reported by the boards of county commissioners to the district attorney, who must commence an action therefor.

ARTICLE XIV.—RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS—GENERAL PROVISIONS.

§ 538. TRUSTEES—NUMBER.] Persons associated together for religious, educational, benevolent, charitable or scientific purposes, may elect trustees or directors, not less than three nor more than eleven, and may incorporate themselves as generally provided for in this chapter.

§ 539. CONTENTS OF ARTICLES.] In addition to the requirements of section 386, the articles of incorporation of any such association, must set forth the holding of the election for trustees or directors, the time and place the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

§ 540. PROPERTY LIMITED.] All such corporations may hold all the property of the association owned prior to incorporation, as well as that acquired thereafter in any manner, and transact all business relative thereto; but no such corporation shall own or hold more real property than may be reasonably necessary for the business and objects of the association; and no such corporation for religious or charitable purposes shall acquire or hold real property of a greater value than fifty thousand dollars.

§ 541. ANNUAL REPORT.] The trustees or directors of all such corporations must annually make a full report of all their property, real and personal, including property held in trust by them, and of the condition thereof, and of all their affairs, to the members of the corporation for which they are acting.

§ 542. COURT MAY PERMIT CONVEYANCE.] Corporations of the character mentioned in this article may sell, exchange, or mortgage, real property held by them, upon obtaining an order for that purpose from the district court held in the county or subdivision in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to sell, exchange, or mortgage, has been given by publication in such manner and for such time as the court or judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation, or any person claiming a vested, contingent, or reversionary interest in such real property, may oppose the granting of the order, by affidavit or otherwise: *Provided*, That the provisions of this section shall not extend to any grounds used or occupied for the burial of the dead.

§ 543. BY-LAWS.] Such corporations may, in their by-laws or articles of incorporation, in addition to the provisions of sections 386 and 404 provide for:

First—The qualification of members, mode of election, and terms of admission to membership.

Second—The fees of admission, and dues to be paid to their treasury by members.

Third—The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership.

Fourth—Contracting, securing, paying and limiting the amount of their indebtedness.

Fifth—Other regulations, not repugnant to the law of the land, and consonant with the objects of the corporation.

§ 544. EQUAL RIGHTS.] Members admitted after incorporation, have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

§ 545. MEMBERSHIP RIGHTS PERSONAL.] No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

RELIGIOUS CORPORATIONS.

§ 546. TRUSTEES—HOW CHOSEN.] The board of trustees of any religious corporation may be chosen at such times and in such manner as may be in conformity to the rules, usage or general discipline of such church.

INSTITUTIONS OF LEARNING.

§ 547. REQUISITES OF ARTICLES.] Any corporation formed for the purpose of establishing an institution of learning must, in addition to the requirements mentioned in section 386, set forth in its articles of incorporation the particular branch or branches of science, literature and the arts, proposed to be taught; and, if the institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

§ 548. PROPERTY APPLIED.] Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of itself or any contributor to the endowment thereof.

§ 549. OBJECTS FOR EXPENDITURE.] The trustees or directors of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting, completing or repairing suitable buildings, in supporting necessary officers, instructors, agents and employes, and in procuring books, maps, charts, globes and philosophical, chemical and other apparatus or cabinets, necessary to the objects and success of the institution; and all donations, devices or bequests made to it for particular purposes, when accepted, shall be applied in conformity with the express condition of the donor or devisor.

§ 550. POWERS OF CORPORATION.] Such corporation has power to appoint a president or principal for the institution and such professors, tutors and other agents and officers as may be necessary, and to displace any of them as the interests of the institution may require; to fill vacancies, to prescribe and direct the course of studies and the discipline to be pursued and observed in the institution and the rates of tuition in the same; and the president and professor shall constitute the faculty of such institution, and they have power to enforce the rules and regulations enacted for the government and discipline of the students, and to suspend and expel offenders as may be deemed expedient.

§ 551. DEGREES CONFERRED.] Every such corporation having the rank of a college or university has power to confer, on the recommendation of the faculty, all such degrees or honors as are usually conferred by colleges and universities in the United States, and such others, having reference to the course of studies and the worth and accomplishment of the student, as may be deemed proper.

§ 552. MECHANICS AND AGRICULTURE.] Such corporation may connect with its institution, to be used as a part of its course of education, any mechanical shops or machinery, or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical and agricultural purposes of such institution.

CEMETERY CORPORATIONS.

§ 553. REAL PROPERTY LIMITED—USES.] Every cemetery corporation has power to purchase or take by gift, grant or devise, and to hold real property, not exceeding eighty acres, for the sole use and purpose of a burial ground, and to lay out the same into blocks and lots with convenient avenues and walks, and to sell the lots for the sole use and purpose of burying the dead; and it may hold all such personal property as the legitimate and necessary purposes of the corporation may require.

§ 554. SURVEY AND PLAT.] Such corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose, to be surveyed into lots, avenues and walks, and platted, and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor, and such number shall be marked on the plat and recorded.

§ 555. POWERS.] Such corporation has power to inclose, improve and embellish its grounds, avenues and walks, and to erect buildings or vaults for its use, and to prescribe in its by-laws, rules for the sale, inclosure and ornamentation of lots and for erecting monuments or grave stones thereon; and to prohibit any use, division, improvement or ornamentation of any lot which the corporation may deem improper; and to make other bylaws and acts to the end that all the appliances, conveniences and benefits of a public and private cemetery may be obtained and secured.

§ 556. USE OF RECEIPTS.] The proceeds arising from the sale of lots, after deducting all expenses of purchasing, inclosing, laying out and improving the ground, and of erecting buildings, shall be exclusively applied, appropriated and used in protecting, preserving, improving and embellishing the cemetery and its appurtenances, and to paying the necessary expenses of the corporation, and must not be appropriated to any purposes of profit to the corporation or its members.

§ 557. PAYMENT OF DEBTS.] At least fifty per cent. of the gross proceeds of sales of blocks, lots or graves must be applied, as often as every six months, to the payment of the debts and obligations of the corporation.

§ 558. PREVIOUS BURIAL PROTECTED.] When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, as hereinafter provided, with all the privileges the purchase of a corporation lot confers.

§ 559. QUALIFICATION OF VOTERS.] At each subsequent election of officers of any such corporation, held after the first annual election, the owner or owners of a lot in the cemetery, and none other, shall be entitled to one vote at such election, or for any other purpose, and no more than one vote; and shall, by virtue of such proprietorship, be a member of the corporation, and eligible to any of its offices; but if there be more than one proprietor of any such lot, then such one of the proprietors as the majority of them shall designate may cast the one vote as aforesaid; and each trustee or director shall be the sole proprietor of a lot in such cemetery.

§ 560. INTERMENT RENDERS LOT INALIENABLE.] Whenever an interment is made in any lot transferred to individual owners by the corporation, the same thereby, while any person is buried therein, becomes forever inalienable, and descends in regular line of succession to the heirs at law of the owner; but any one or more of such heirs may release to any other of said heirs his or their interest in the same, and any other joint owners may release to each other in like manner.

§ 561. EXEMPT WHOLLY.] All the property of every such benevolent corporation, and the lots sold by it to individual proprietors, shall be exempt from taxation, assessment, lien, attachment, and from levy and sale upon execution; and all such real property shall be exempt from appropriation for streets, roads, or any other public uses or purposes.

OTHER BENEVOLENT CORPORATIONS.

§ 562. SPECIAL ASSOCIATIONS AND ORDERS.] The following associations for benevolent and charitable purposes may become incorporated, as provided in this chapter, to-wit:

1. To establish and maintain hospitals and infirmaries for the cure of the sick and support of the aged and indigent, and asylums for orphans.

2. For the mutual assistance of the members in time of sickness or necessity, and to provide a fund for this purpose by contributions of the members thereof from time to time, and for the like incidental benevolent purposes.

3. To establish and maintain lodges, chapters and encampments of fraternities or associations commonly known as free masons, the independent order of odd fellows, good templars, sons of temperance, and other like benevolent orders or societies.

4. To establish and maintain fire companies in any incorporated city or town.

ARTICLE XV.—AGRICULTURAL FAIR CORPORATIONS.

§ 563. PROPERTY RIGHTS.] Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising and general domestic industry.

§ 564. DEBTS LIMITED] Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract except for the purchase of real property, for which they may create a debt not exceeding three thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

§ 565. CHARGES AND EXPENSES.] Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership and admissions, which charges, together with the term of membership and mode of acquiring the same must be provided for in their by-laws. Such charges and fees must never be greater than to raise sufficient money to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

ARTICLE XVI.—EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

§ 566. PROCEEDINGS—VOTE—CERTIFICATE.] Any corporation existing at the passage of this act, formed under the laws of this territory, may elect to continue its existence under the provisions of this chapter applicable thereto, and it may, at any time thereafter, make such choice or election, at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock, or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or, a certificate of the proceedings of the meeting of the stockholders or members when such election is so made, signed by the chairman and secretary of the meeting and a majority of the directors and trustees, must be filed in the office of the secretary of the territory, and thereafter the corporation shall continue its existence under the provisions of this chapter which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

ARTICLE XVII.—DUTIES OF FOREIGN CORPORATIONS.

§ 567. FILING CHARTER.] No corporation created or organized under the laws of any other state or territory shall transact any business within this territory, or acquire, hold, and dispose of property, real, personal or mixed within this territory, until such corporation shall have filed in the office of the secretary of the territory, a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: *Provided*, That the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely.

§ 568. RECORD.] Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this territory for that purpose.

§ 569. RESIDENT AGENT TO ACCEPT SERVICE.] Such corporation shall appoint an agent, who shall reside at some accessible point in this territory, in the county where the principal business of said corporation shall be carried on, duly authorized to accept service of process, and upon whom service of process may be made in any action in which said corporation may be a party: and service upon such agent shall be taken and held as due service upon such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed and recorded in the office of the secretary of the territory, and a certified copy thereof by the secretary shall be conclusive evidence of the appointment and authority of such agent.

CHAPTER IV.

PRODUCTS OF THE MIND.

§ 570. COMPOSITION—ART—MAPS.] The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him, remain in his possession.

§ 571. JOINT PRODUCTS DEFINED.] Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions; or,
2. If it is not single, in proportion to the contribution of each.

§ 572. TRANSFER.] The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

§ 573. PUBLICATION.] If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this territory is concerned.

§ 574. PRIOR PUBLICATION.] If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

§ 575. PRIVATE LETTERS.] Letters and other private communications in writing, belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER V.

OTHER KINDS OF PERSONAL PROPERTY.

§ 576. TRADE MARKS LIMITED.] One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

§ 577. GOOD WILL.] The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

§ 578. IS PROPERTY.] The good will of a business is property, transferable like any other.

§ 579. TITLE DEEDS.] Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART 4.

ACQUISITION OF PROPERTY.

TITLE I. Modes in which Property may be Acquired.
II. Occupancy.
III. Accession.
IV. Transfer.
V. Will.
VI. Succession.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

§ 580. MODES CLASSED.] Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.
4. Will; or,
5. Succession.

TITLE II.

OCCUPANCY.

§ 581. TITLE BY—LIMITED.] Occupancy for any period confers a title sufficient against all except the territory, and those who have title by prescription, accession, transfer, will or succession.

§ 582. PRESCRIPTION.] Occupancy for the period prescribed by the code of civil procedure, or any law of this territory as sufficient to bar an action for the recovery of the property, confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

CHAPTER I. To Real Property.
II. To Personal Property.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

§ 583. LAND FIXTURES—TENANTS.] When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it: *Provided*, That a tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

§ 584. RIPARIAN ACCRETIONS.] Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material, or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

§ 585. REMOVALS IN MASS.] If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 586. ISLANDS IN NAVIGABLE STREAMS.] Islands and accumulations of land formed in the beds of streams which are navigable, belong to the territory, if there is no title or prescription to the contrary.

§ 587. IN OTHER STREAMS.] An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 588. BY NEW CHANNEL.] If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

§ 589. ANCIENT BED.] If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

§ 590. INSEPARABLY UNITED.] When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

§ 591. DOMINANT PART DEFINED.] That part is to be deemed the principal, to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

§ 592. HOW DETERMINED.] If neither party can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

§ 593. WORK AND MATERIAL.] If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

§ 594. BLENDED MATERIALS.] Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

§ 595. ADMIXTURES.] When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

§ 596. WILLFUL USES. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

§ 587. ALTERNATIVE OF KIND OR VALUE.] In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material, in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

§ 598. DAMAGES ALSO.] One who wrongfully employs materials belonging to another, is liable to him in damages, as well as under the foregoing provisions of this chapter.

TITLE IV.

TRANSFER.

CHAPTER I. Transfer in general.
II. Transfer of real property.
III. Transfer of personal property.
IV. Recording transfer.
V. Unlawful transfers.

CHAPTER I.

TRANSFER IN GENERAL.

ARTICLE I. Definition of transfer.
II. What may be transferred.
III. Mode of transfer.
IV. Interpretation of grants.
V. Effect of transfer.

ARTICLE I.—DEFINITION OF TRANSFER.

§ 599. DEFINITION.] Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

§ 600. CONSIDERATION WHEN UNNECESSARY.] A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.—WHAT MAY BE TRANSFERRED.

§ 601. ANY PROPERTY.] Property of any kind may be transferred, except as otherwise provided by this article.

§ 602. NOT TRANSFERABLE.] A mere possibility, not coupled with an interest, cannot be transferred.

§ 603. ONLY TO PRINCIPAL OWNER.] A mere right of re-entry, or of repossession for breach of a condition subsequent, cannot be transferred to any one except the owner of the property affected thereby.

ARTICLE III.—MODE OF TRANSFER.

§ 604. WRITING ONLY WHEN REQUIRED.] A transfer may be made without writing in every case in which a writing is not expressly required by statute.

§ 605. GRANT DEFINED.] A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this and the next two articles includes all these instruments, unless it is specially applied to real property.

§ 606. EFFECT BY DELIVERY.] A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

§ 607. PRESUMED DATE.] A grant duly executed is presumed to have been delivered at its date.

§ 608. TO GRANTEE ABSOLUTE.] A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon discharged of any condition on which the delivery was made.

§ 609. ESCROW.] A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

§ 610. REDELIVERY NOT TRANSFER.] Redelivering a grant of real property to the grantor, or cancelling it, does not operate to retransfer the title.

§ 611. CONSTRUCTIVE DELIVERY.] Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

ARTICLE IV.—INTERPRETATION OF GRANTS.

§ 612. LIKE CONTRACTS.] Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this article.

§ 613. RELATIVE FORCE OF PARTS.] A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

§ 614. RECITALS CLEAR DOUBTS.] If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

§ 615. INTERPRETATION.] A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

§ 616. FORMER PART PREVAILS.] If several parts of a grant are absolutely irreconcilable, the former part prevails.

§ 617. WITHOUT ISSUE—DEFINED.] Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

§ 618. Requisites of fee.] Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.—Effect of transfer.

§ 619. Vest actual title.] A transfer vests in the transferee all the actual title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied.

§ 620. Thing includes incident.] The transfer of a thing transfers also all its incidents unless expressly excepted: but the transfer of an incident to a thing does not transfer the thing itself.

§ 621. Party not named.] A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

Article I. Mode of Transfer.
II. Effect of Transfer.

ARTICLE I.—Mode of transfer.

§ 622. By law or writing.] An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent, thereunto authorized by writing.

§ 623. Seal abolished—proof.] The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved by a subscribing witness or as otherwise provided in section 648. The absence of the seal of any grantor or his agent from any grant of an estate in real property heretofore or hereafter made, shall not invalidate or in any manner impair the same.

§ 624. Form of grant.] A grant of an estate in real property may be made, in substance, as follows:

This grant, made the .... day of ...., in the year ...., between A. B., of ...., of the first part, and C. D., of ...., of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of .... dollars, now received, all the real property situated in ...., and bounded (or described) as follows: ....
Witness the hand of the party of the first part.

A. B.

§ 625. Married woman.] No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by section 660.

§ 626. Power of attorney by same.] A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner prescribed in section 660.

2. When an attorney in fact executes an instrument transferring an estate in real property he must subscribe the name of his principal to it, and his own name as attorney in fact.

ARTICLE II.—EFFECT OF TRANSFER.

§ 627. ALL EASEMENTS PASS.] A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent, as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

§ 628. WARRANTEES IMPLIED BY GRANT.] From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

§ 629. EFFECT DEFINED.] Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for a valuable consideration, acquires a title or lien by a instrument that is first duly recorded.

§ 630. VALID PRO TANTO.] A grant, made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

§ 631. TITLE TO HIGHWAY.] A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the centre thereof, unless a different intent appears from the grant.

§ 632. TENANTS' RIGHTS.] Grants of rents, or of reversions, or of remainders are good and effectual without attornments of the tenants, but no tenant, who, before notice of the grant, shall have paid rent to the grantor must suffer any damage thereby.

§ 633. PRESUMPTIONS—CONSTRUCTIONS—LIENS.] Lineal and collateral warrantees, with all their incidents are abolished; but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the maner prescribed by law.

2. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

3. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

4. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

5. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant, must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

6. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

CHAPTER III.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE I. Mode of transfer.
II. What operates as a transfer.
III. Gifts.

ARTICLE I.—MODE OF TRANSFER.

§ 634. TRUSTS AND SHIPS.] An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

§ 635. OTHER PERSONALTY.] The mode of transferring other personal property by sale, is regulated by the title on that subject in the third division of this code.

ARTICLE II.—WHAT OPERATES AS A TRANSFER.

§ 636. PRESENT TRANSFER.] The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

§ 637. FUTURE.] Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance.

§ 638. BY AGENT.] Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitle to rescind, and does rescind the transfer made by him.

ARTICLE III.—GIFTS.

§ 639. NO CONSIDERATION.] A gift is a transfer of personal property, made voluntarily and without consideration.

§ 640. DELIVERY NECESSARY.] A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

§ 641. IRREVOCABLE.] A gift, other than a gift in view of death, cannot be revoked by the giver.

§ 642. IN VIEW OF DEATH.] A gift in view of death, is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

§ 643. PRESUMED—WHEN.] A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

§ 644. REVOCABLE—LIMITATION.] A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation shall not be affected by the revocation.

§ 645. WILL DOES NOT AFFECT.] A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

§ 646. DEEMED A LEGACY.] A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. What may be recorded.
II. Mode of recording.
III. Proof and acknowledgment of instruments.
IV. Effect of recording, or of the want thereof.

ARTICLE I.—WHAT MAY BE RECORDED.

§ 647. JUDGMENTS—LETTERS PATENT, ETC.] Any instrument or judgment affecting the title to or posession of real property may be recorded under this chapter.

2. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

3. Letters patent from the United States may be recorded without acknowledgment or further proof.

§ 648. PREREQUISITES TO RECORD.] Before an instrument can be recorded, unless it belongs to the class provided for in either sections 647 or 667, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections 663 and 664, and the acknowledgment or proof certified in the manner prescribed by article III of this chapter.

§ 649. PROVED INSTRUMENT FILED.] An instrument proved and certified pursuant to sections 663 and 664 may be recorded in the proper office, if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

§ 650. CREDITOR'S TRUSTS AND LIENS.] Transfers of property in trust for the benefit of creditors, and transfers of or liens on property, by way of mortgage, are required to be recorded in the cases specified in the title on special relations of debtor and creditor, and the chapter on mortgages, respectively.

ARTICLE II.—MODE OF RECORDING.

§ 651. WHERE AND WHEN.] Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. The register must, in all cases, indorse the amount of his fee for the recording on the instrument recorded.

2. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the register's office, with the proper officer, for record.

§ 652. SEPARATE CLASSES.] Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

§ 653. REGISTERS' DUTIES.] The duties of register of deeds, in respect to recording instruments, are prescribed by statute.

§ 654. OF VESSELS.] The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of congress.

ARTICLE III.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 655. WITHIN TERRITORY.] The proof or acknowledgment of an instrument may be made at any place within this territory, before a justice, clerk of the supreme court, or notary public.

§ 656. WITHIN JURISDICTION.] The proof or acknowledgment of an instrument may be made in this territory within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before either:

One—A judge or clerk of a court of record; or,
Two—A mayor of a city; or,
Three—A register of deeds; or,
Four—A justice of the peace.

§ 657. WITHIN UNITED STATES.] The proof or acknowledgment of an instrument may be made without the territory, but within the United States, and within the jurisdiction of the officer, before either:

One—A justice, judge, or clerk of any court of record of the United States.

Two—A justice, judge, or clerk of any court of record of any state or territory; or,

Three—A notary public; or,

Four—Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

Five—A commissioner appointed for the purpose by the governor of this territory, pursuant to the political code.

§ 658. FOREIGN.] The proof or acknowledgment of an instrument may be made without the United States before either:

One—A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

Two—A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

Three—A judge of a court of record of the country where the proof or acknowledgment is made; or,

Four—A notary public of such country.

When any of the officers mentioned in this article are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

§ 659. REQUISITES OF ACKNOWLEDGMENT.] The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

§ 660. MARRIED WOMAN.] The acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument freely, and that she does not wish to retract such execution.

§ 661. SAME.] A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section; but such conveyance has no validity until so acknowledged.

§ 662. BY WHOM PROVED.] Proof of the execution of an instrument, when not acknowledged, may be made either:

One—By the party executing it, or either of them; or,

Two—By a subscribing witness; or,

Three—By other witnesses, in cases mentioned in sections 663 and 664.

1. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

2. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

§ 663. HANDWRITING—WHEN.] The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

One—When the parties and all the subscribing witnesses are dead; or,

Two—When the parties and all the subscribing witnesses are non-residents of the territory; or,

Three—When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

Four—When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpœna or attachment; or,

Five—In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

§ 664. FACTS REQUIRED] The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

One—The existence of one or more of the conditions mentioned therein; and,

Two—That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

Three—That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

Four—The place of residence of the witness.

§ 665. CONTENTS OF CERTIFICATE] An officer taking proof of the execution of an instrumnnt must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him, on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

§ 666. FORMS OF CERTIFICATE.] An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed; and such certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

1. TERRITORY OF......OR STATE OF......, } ss
County of .... }

On this ....day of........, in the year...., before me personally appeared......, known to me (or proved to me on the oath of......) to be the person who is described in, and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

2. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

TERRITORY OF........, } ss
County of........

On this........day of.... ..., in the year......, before me (here insert the name and quality of the officer), personally appeared............, known to me (or proved to me on the oath of........) to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledgod to me that such corporation executed the same.

3. The certificate of acknowledgment by a married woman must be substantially in the following form:

TERRITORY OF.... ..., } ss
County of........

On this........day of........in the year..... .., before me (here insert the name and quality of the officer,) personally appeared........, known to me (or proved to me on the oath of ....) to be the person who is described as a married woman in, and whose name is subscribed to the within instrument; and upon an examination, without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same freely, and that she does not wish to retract such execution.

4. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

TERRITORY OF........, } ss
County of........

On this........day of........, in the year...., before me (here insert the name and quality of the officer) personally appeared...., known to me (or proved to me on the oath of....) to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of.........., and acknowledged to me that he subscribed the name of........ thereto as principal, and his own name as attorney in fact.

5. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid, by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof.

6. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the district court, or of any other county court of record, of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

§ 667. *Action to correct.*] 1. When the acknowledgment or proof of execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

2. Any person interested under an instrument entitled to be proved for record, may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

3. A certified copy of the judgment in a proceeding instituted under either of the two preceding subdivisions, showing the proof of the instrument, and attached thereto, entitles the instrument to record, with like effect as if acknowledged.

§ 668. POWERS OF OFFICER.] Officers authorized to take the proof of instruments are authorized in such proceedings:

One—To administer oaths or affirmations.

Two—To employ and swear interpreters.

Three—To issue subpœnas, and to punish for contempt, as provided in the code of civil procedure in regard to the means of producing witnesses.

§ 669. FORMER LAWS APPLY.] The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this amended code goes into effect, executed, acknowledged, proved or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality, except as to seals, upon the laws in force when the act was performed.

§ 670. RECORD AND EFFECT OF FORMER DEEDS.] All conveyances of real property made before this amended code goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

ARTICLE IV.—EFFECT OF RECORDING, OR THE WANT THEREOF.

§ 671. FIRST RECORD VALID.] Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

§ 672. CONVEYANCE DEFINED.] The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected; except wills, executory contracts for the sale or purchase of real property, and powers of attorney.

§ 673. REQUISITE OF REVOCATION.] No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

§ 674. EFFECT OF PROVED INSTRUMENTS.] The recording and deposit of an instrument proved and certified according to the provisions of sections 649, 662, 663 and 664, are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument or the record thereof, or the transcript of the record, to be read in evidence.

§ 675. UNRECORDED—HOW VALID.] An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

§ 676. FRAUDULENT—VOID.] Every instrument other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

§ 677. NOTICE AVOIDS FRAUD.] No instrument is to be avoided under the last preceding section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made, was privy to the fraud intended.

§ 678. CONSTRUCTIVE REVOCATION.] Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property is reserved to the grantor, or given to any other person, a subsequent grant of or charge upon the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

§ 679. POWER DEEMED EXECUTED.] Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

§ 680. GOOD FAITH PROTECTED.] The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter.

V § 681. ADVERSE POSSESSION.] Every grant of real property, other than one made by the territory, or under a judicial sale, is void, if at the time of the delivery thereof, such real property is in the actual possession of a person claiming under a title adverse to that of the grantor.

§ 682. OTHER UNLAWFUL TRANSFERS.] Other provisions concerning unlawful transfers are contained in part 2 of the fourth division of this code, concerning the special relations of debtor and creditor.

TITLE V.

WILL.

CHAPTER I. Execution and revocation of wills.
II. Interpretation of wills.
III. General provisions relating to wills.

CHAPTER I.

EXECUTION AND REVOCATION OF WILL.

§ 683. WHO MAY MAKE—OTHER PROPERTY.] Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title VI of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the code of civil procedure.

§ 684. MARRIED WOMAN—EQUAL RIGHT.] A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

§ 685. UNDUE INFLUENCE.] A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

§ 686. WHAT DISPOSABLE.] Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will.

§ 687. TO WHOM.] A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

§ 688. NUNCUPATIVE WILL.] To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

One—The estate bequeathed must not exceed in value the sum of one thousand dollars.

Two—It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

Three—The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

§ 689. MUTUAL WILL—REVOCATION.] A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

§ 690. PROBATE OF CONDITIONAL WILL.] A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

§ 691. EXECUTION OF WILLS—OLOGRAPHIC.] An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this territory and need not be witnessed.

2. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence, and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

§ 692. NOT IN WRITING.] A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

§ 693. METHOD OF WITNESSING WILL.] A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

§ 694. CODICIL—EFFECT.] The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

§ 695. LAW OF THE PLACE GOVERNS] A will of real or personal property, or both, or a revocation thereof, made out of this territory by a person not having his domicile in this territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this territory, and according to the provisions of this chapter.

§ 696. MUST BE FOLLOWED.] No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

§ 697. CHANGE OF DOMICILE.] Whenever a will or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place, by the law of which such will would be void.

§ 698. DEPOSITED WILLS.] Every probate judge must deposit in his office, any will delivered to him for that purpose, and give a written receipt to the depositor; and must inclose such will in a sealed wrapper, so that it cannot be read, and indorse thereon the name of the testator, his residence, and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

§ 699. HOW DISPOSED OF.] A will deposited under the provisions of the last section, must be delivered only:

1. To the testator in person.

2. Upon his written order, duly proved by the oath of a subscribing witness.

3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or.

4. If there is no such indorsement, and if the will was not deposited with the probate judge having jurisdiction of its probate, then to the probate judge who has jurisdiction.

§ 700. PROBATE JUDGE OPENS.] The probate judge with whom a will is deposited, or to whom it is delivered, must, after the death of the testator, publicly open and examine the will and file it in his office, there to remain until duly proved, or to deliver it to the probate judge having jurisdiction of its probate.

§ 701. PROOF OF LOST WILL.] A lost or destroyed will of real or personal property, or both, may be established in the cases provided in the probate code, or any act in force on that subject.

§ 702. REVOCATION OF WILLS.] Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered, otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

§ 703. PROOF OF DESTRUCTION.] When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction must be proved by two witnesses.

§ 704. PARTIAL ERASURE.] A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected.

§ 705. DUPLICATES—REVOCATION.] The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

§ 706. WILLS VALID.] A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

§ 707. REVIVOR NOT PRESUMED.] If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his intention to remove the former will, or unless after such destruction, canceling or revocation, he duly republishes the prior will.

§ 708. ISSUE, OR WIFE, AFTER WILL MADE.] 1. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

2. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

§ 709. WOMAN'S MARRIAGE REVOKES WILL.] A will executed by an unmarried woman is revoked by a subsequent marriage, and is not revived by the death of her husband.

§ 710. DEVISED PROPERTY SOLD—EFFECT.] An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

§ 711. INCUMBRANCE NOT REVOCATION.] A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass subject to such charge or incumbrance.

§ 712. PARTIAL DISPOSAL AFTER WILL.] A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

§ 713. WHEN SUCH ACT REVOKES.] If the instrument, by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect.

§ 714. CODICILS.] The revocation of a will revokes all its codicils.

§ 715. SUCCESSION SUPPLEMENTS WILL.] Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property, that he would have succeeded to if the testator had died intestate.

1. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

2. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

3. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding subdivisions.

4. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

§ 716. DEVISEE'S DESCENDANTS TAKE.] When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

§ 717. GIFT TO A WITNESS VOID.] All beneficial devises, legacies or gifts whatever, made or given in any will to a subscribing witness thereto, are void unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will.

§ 718. NOT IF ENTITLED—COMPETENCY.] If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

1. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

§ 719. PROPERTY ACQUIRED AFTER WILL.] Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

§ 720. INTENTION PREVAILS.] A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

§ 721. WILL EXCLUDES ORAL DECLARATION.] In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 722. RULES OF INTERPRETATION] In interpreting a will, subject to the laws of this territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

§ 723. CONSTRUED TOGETHER, IF SEVERAL] Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

§ 724. IRRECONCILABLE PARTS.] All the parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but where several parts are absolutely irreconcilable, the latter must prevail.

725. INACCURACIES.] A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

§ 726. AMBIGUITIES.] Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

§ 727. WORDS IN ORDINARY USE.] The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

§ 728. CONSTRUCTION.] The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

§ 729. VALIDITY.] Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

§ 730. TECHNICAL WORDS.] Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

§ 731. NOT NECESSARY.] Technical words are not necessary to give effect to any species of disposition by a will.

§ 732. WORDS OF INHERITANCE.] The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

§ 733. EXECUTING POWER] Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

§ 734. GENERAL WORDS] A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

§ 735. RESIDUE OF REALTY.] A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

§ 736. OF PERSONALTY.] A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

§ 737. EFFECT OF CERTAIN TERMS.] A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession, in this code.

§ 738. WORDS OF DONATION.] The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

§ 739. POSTPONED POSSESSION.] Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

§ 740. CLASS INCLUDES ALL.] A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description, before the time to which possession is postponed.

§ 741. CONVERSION OF REALTY.] When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death.

§ 742. UNBORN CHILD INCLUDED.] A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

§ 743. IMPERFECTION NOT ORALLY REMOVED.] When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence: but evidence of the declarations of the testator as to his intention cannot be received.

§ 744. VEST AT DEATH.] Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 745. DISPOSAL DIVESTED ONLY WHEN.] A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

§ 746. DEATH CAUSES FAILURE.] If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 716.

§ 747. NOT OF REMAINDER.] The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

§ 748. UNCERTAIN EVENT.] A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

§ 749. CONDITION PRECEDENT.] A condition precedent in a will, is one which is required to be fulfilled before a particular disposition takes effect.

§ 750. UNKNOWN OR UNAVOIDABLE EVENT.] Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled; except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

§ 751. SUBSTANTIAL COMPLIANCE.] A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.

§ 752. SUBSEQUENT DIVESTING.] A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

§ 753. OWNERS IN COMMON.] A devise or legacy given to more than one person, vests in them as owners in common.

§ 754. GIFTS DO NOT REDUCE LEGACIES.] Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

§ 755. LEGACIES CLASSED AND DEFINED.] Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified, and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.
2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.
3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.
4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.
5. All other legacies are general legacies.

§ 756. NON-EXEMPT PROPERTY ASSETS.] When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the code of civil procedure.

§ 757. ORDER OF PROPERTY FOR DEBTS.] The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of debts, in the following order:

One—The property which is expressly appropriated by the will for the payment of the debts.

Two—Property not disposed of by the will.

Three—Property which is devised or bequeathed to a residuary legatee.

Four—Property which is not specifically devised or bequeathed; and

Five—All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

§ 758. FOR LEGACIES.] The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of legacies, in the following order:

One—The property which is expressly appropriated by the will for the payment of the legacies.

Two—Property not disposed of by the will.
Three—Property which is devised or bequeathed to a residuary legatee.
Four—Property which is specifically devised or bequeathed.

§ 759. PREFERRED LEGACIES.] Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

§ 760. CLASS ONLY AFFECTED.] Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

§ 761. REPRESENTATIVE MAY SELL.] In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the probate court to sell the property devised or bequeathed, in the cases herein provided.

§ 762. PROVED DEVISE IMPAIRS DEED BY HEIR.] The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the probate judge of the county where the real property is situated, within four years after the devisor's death.

§ 763. SUCCESSION TO LIMITED DEVISES.] Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benfit of the second legatee, or to the personal representative, as the case may be.

§ 764. INCOME AFTER DEATH.] In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

§ 765. SATISFIED BEFORE DEATH.] A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

§ 766. DUE IN ONE YEAR.] Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

§ 767. INTEREST AFTER DUE.] Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

§ 768. INTENTION CONTROLS.] The four preceding sections are in all cases to be controlled by a testator's express intention.

§ 769. UNNAMED EXECUTOR ENTITLED.] Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

§ 770. VOID AUTHORITY.] An authority to an executor to appoint an executor is void.

§ 771. EXECUTOR'S POWER BEGINS] No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

§ 772. LIMITATION OF POWER] No executor of an executor, as such, has any power over the estate of the first testator.

§ 773. WILL INCLUDES CODICIL.] The term "will," as used in this code, includes all codicils as well as wills.

§ 774. LAW OF PLACE OR DOMICILE.] Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this territory, by the law of this territory; when relating to personal property, by the law of the testator's domicile.

§ 775. LIABILITY OF DEVISEES AND LEGATEES.] Those to whom property is given by will, are liable for the obligations of the testator in the cases and to the extent prescribed by the code of civil procedure, or the statutes in such case made and provided.

TITLE VI.

SUCCESSION.

§ 776. DEFINITION OF.] Succession is the coming in of another to take the property of one who dies without disposing of it by will.

§ 777. ALL PROPERTY TO HEIRS.] The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration.

§ 778. ORDER OF, TO PROPERTY NOT WILLED.] When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the probate code, subject to the payment of his debts, in the following manner:

One—If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

Two—If the decedent leave no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if he leave a mother also, she takes an equal share with the brothers and sisters. If decedent leave no issue, nor husband, nor wife, the estate must go to the father.

Three—If there be no issue, nor husband nor wife, nor father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if a mother survive, she takes an equal share with the brothers and sisters.

Four—If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Five—If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Six—If the decedent leave no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However:

Seven—If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eight—If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Nine—If the decedent leave no husband, wife, or kindred, the estate escheats to the territory for the support of common schools.

§ 779. ABOLISHED.] Dower and curtesy are abolished.

§ 780. INHERITANCE BY ILLEGITIMATE CHILD.] Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

§ 781. FROM THE SAME.] If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or in case of her decease to her heirs at law.

§ 782. EACH GENERATION A DEGREE.] The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 783. LINEAL AND COLLATERAL.] The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

§ 784. ASCENDING AND DESCENDING.] The direct line is divided into a direct line descending, and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends.

§ 785. DIRECT LINE DEGREES.] In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

§ 786. COLLATERAL DEGREES.] In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth degree, and so on.

§ 787. HALF BLOOD.] Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, must be excluded from such inheritance.

§ 788. ADVANCEMENTS PART OF SHARE.] Any estate, real or personal, given by the decedent in his lifetime, as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

§ 789. EXCESS NOT REFUNDED.] If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

§ 790. ADVANCEMENTS DEFINED.] All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

§ 791. EXPRESSED VALUE GOVERNS.] If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

§ 792. REPRESENTATION—SAME RULE.] If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

§ 793. INHERITANCE BY—DEFINED.] Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

§ 794. ALIENAGE NO DISABILITY.] Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this title, is precluded from such succession by reason of the alienage of any relative.

§ 795. ESCHEATED ESTATES.] If there is no one capable of succeeding under the preceding sections, and the title fails from a defect of heirs, the property of a decedent devolves and escheats to the territory; and an action for the recovery of such property, and to reduce it into the possession of the territory, or for its sale and conveyance, may be brought by the district attorney in the district court of the county or judicial subdivision in which the property is situated.

§ 796. SUBJECT TO CHARGES.] Real property passing to the territory under the preceding section, whether held by the territory or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

§ 797. LIABILITY OF HEIRS.] Those who succeed to the property of a decedent, are liable for his obligations in the cases and to the extent prescribed by the probate code.

DIVISION THIRD.

OBLIGATIONS.

PART I. Obligations in general.
II. Contracts.
III. Obligations imposed by law.
IV. Obligations arising from particular transactions.

PART 1.

OBLIGATIONS IN GENERAL.

TITLE I. Definition of obligations.
II. Interpretation of obligations.
III. Transfer of obligations.
IV. Extinction of obligations.

TITLE I.

DEFINITION OF OBLIGATIONS.

§ 798. DEFINITION.] An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

§ 799. ORIGIN AND ENFORCEMENT.] An obligation arises either from:

One—The contract of the parties; or,

Two—The operation of law.

An obligation arising from operation of law, may be enforced in the manner provided by law, or by civil action or proceeding.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I. General rules of interpretation.
II. Joint or several obligations.
III. Conditional obligations.
IV. Alternative obligations.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

§ 800. RULES OF INTERPRETATION.] The rules which govern the interpretation of contracts are prescribed by part 2 of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

§ 801. CLASSES.] An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several.

§ 802. PRESUMED JOINT.] An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

§ 803. CONTRIBUTION.] A party to a joint, or joint and several, obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

§ 804. UNCERTAIN EVENT.] An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

§ 805. CONDITIONS CLASSED.] Conditions may be precedent, concurrent or subsequent.

§ 806. PRECEDENT.] A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

§ 807. CONCURRENT.] Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

§ 808. SUBSEQUENT] A condition subsequent is one referring to a future event, upon happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

§ 809. EQUITY REQUIRES EQUITY.] Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able, and offer, to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party; except as provided by the next section.

§ 810. PERFORMANCE WAIVED.] If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part, in favor of the former party.

§ 811. UNLAWFUL CONDITIONS.] A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

§ 812. FORFEITURE.] A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

§ 813. SELECTION ALLOWED.] If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

§ 814. NOT USED, PASSS TO OTHER.] If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose; or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

§ 815. ALTERNATIVES DISTINCT.] The party having the right of selection between alternative acts, must select one of them in its entirety, and cannot select part of one and part of another, without the consent of the other party.

§ 816. VALID ONE PREVAILS.] If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

§ 817. BENEFICIARY'S CONSENT.] The burden of an obligation may be transferred, with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 825.

§ 818. BY INDORSEMENT.] A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

2. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

§ 819. COVENANTS FOLLOW LAND.] Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor, and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

§ 820. WHAT SO RUN.] The only covenants which run with the land, are those specified in this title, and those which are incidental thereto.

§ 821. IF IT BENEFITS PROPERTY.] Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it, then in existence, runs with the land.

§ 822. COVENANTS THAT RUN WITH LAND.] The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

§ 823. LIMITED TO CERTAIN ASSIGNS.] A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

§ 824. ONLY FOLLOWS WHOLE ESTATE.] A covenant running with the land binds those only who acquire the whole estate of the covenanter in some part of the property.

§ 825. LIABILITY WHILE HOLDING.] No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for breach of the covenant before he acquired the estate, or after he has parted with it, or ceased to enjoy its benefits.

§ 826. BURDEN APPORTIONED.] Where several persons, holding by several titles, are subject to the burden, or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. Performance.
II. Offer of performance.
III. Prevention of performance or offer.
IV. Accord and satisfaction.
V. Novation.
VI. Release.

CHAPTER I.

PERFORMANCE.

§ 827. EXTINGUISHMENT.] Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

§ 828. BY ONE FOR ALL.] Peformance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

§ 829. TO ONE FOR ALL.] An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

§ 830. PARTICULAR MANNER.] If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

§ 831. ACCEPTANCE OF PART.] A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it, without injuring his own property, his retention thereof is not presumed to be voluntary.

§ 832. PAYMENT DEFINED.] Performance of an obligation for the delivery of money only, is called payment.

§ 833. PERFORMANCE HOW APPLIED.] Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

One—If, at the time of the performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

Two—If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

Three—If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral undertaking.
5. Of an obligation secured by a lien or collateral undertaking.

CHAPTER II.

OFFER OF PERFORMANCE.

§ 834. OF COMPLETE PERFORMANCE.] An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

§ 835. PARTIAL.] An offer of partial performance is of no effect.

§ 836. MUST BE BY DEBTOR.] An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

§ 837. TO CREDITOR.] An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

§ 838. PLACE OF PERFORMANCE.] In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,
2. Wherever the person to whom the offer ought to be made, can be found; or,
3. If such person cannot, with reasonable diligence, be found within this territory, and within a reasonable distance from his residence or

place of business, or if he evades the debtor, then at his residence, or place of business, if the same can, with reasonable diligence, be found within the territory; or,

4. If this cannot be done, then at any place within this territory.

§ 839. TIME—REASONABLE HOURS.] Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

§ 840. TIME NOT SPECIFIED.] Where an obligation does not fix the time for its performance, an offer of performance may be made at any time, before the debtor, upon a reasonable demand, has refused to perform.

§ 841. DELAY COMPENSATED—WHEN.] Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

§ 842. FAVORABLE MANNER—GOOD FAITH.] An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

§ 843. FREE FROM CONDITION.] An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

§ 844. ABILITY MUST ATTEND OFFER.] An offer of performance is of no effect, if the person making it is not able and willing to perform according to the offer.

§ 845. PRODUCTION ONLY IF ACCEPTED.] The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance, unless the offer is accepted.

§ 846. THING OFFERED DISTINCT.] A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

§ 847. CONTINGENT OFFER.] When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

§ 848. RECEIPT OBLIGATORY.] A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

§ 849. DEPOSIT OF TENDER.] An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this territory, of good repute, and notice thereof is given to the creditor.

§ 850. OBJECTIONS WAIVED.] All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

§ 851. PROFFERED TITLE PASSES.] The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

§ 852. DEPOSIT OF THING OFFERED.] The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence, he can find a suitable depositary therefor, until he has deposited it with such person.

§ 853. DUE OFFER STOPS INTEREST.] An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

§ 854. BAILEE OF NON-ACCEPTED OFFER.] If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

§ 855. EXCUSES DEFINED AND LIMITED.] The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible superhuman cause, or by the act of public enemies of this territory or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

§ 856. PREVENTED BY CREDITOR] If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

§ 857. RATABLE PART OF CONSIDERATION.] If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance according to the benefit which the creditor receives from the actual performance.

§ 858. REFUSAL BEFORE OFFER] A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

§ 859. DEFINITION.] An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

§ 860. OBLIGATION ABIDES.] Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

§ 861. ACCORD EXTINGUISHES OBLIGATION—WHEN.] Acceptance, by the creditor, of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

§ 862. PART PERFORMANCE ACCEPTED.] Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

CHAPTER V.

NOVATION.

§ 863. DEFINITION.] Novation is the substitution of a new obligation for an existing one.

§ 864. CLASSES OF SUBSTITUTION.] Novation is made:

One—By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

Two—By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

Three—By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

§ 865. UNDER RULES OF CONTRACT.] Novation is made by contract, and is subject to all the rules concerning contracts in general.

§ 866. RESCINDING ACCEPTANCE.] When the obligation of a third person, or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

CHAPTER VI.

RELEASE.

§ 867. EXTINGUISHES OBLIGATION.] An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

§ 868. ONLY KNOWN CLAIMS.] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

§ 869. JOINT DEBTORS' DUTIES.] A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

PART 2.

CONTRACTS.

TITLE I. Nature of a Contract.
II. Manner of Creating Contracts.
III. Interpretation of Contracts.
IV. Unlawful Contracts.
V. Extinction of Contracts.

TITLE I.

NATURE OF CONTRACT.

CHAPTER I. Definition.
II. Parties.
III. Consent.
IV. Object.
V. Consideration.

CHAPTER I.

DEFINITION.

§ 870. DEFINITION.] A contract is an agreement to do or not to do a certain thing.

§ 871. REQUISITES OF.] It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. Sufficient cause or consideration.

CHAPTER II.

PARTIES.

§ 872. WHO MAY CONTRACT.] All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

§ 873. CAPACITY OF CERTAIN CLASSES.] Minors and persons of unsound mind, have only such capacity as is defined by part 1 of the first division of this code.

§ 874. IDENTITY OF PARTIES.] It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.

§ 875. BENEFICIARY MAY ENFORCE.] A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

§ 876. QUALITIES OF CONSENT.] The consent of the parties to a contract must be:

1. Free.
2. Mutual; and,
3. Communicated by each to the other.

§ 877. IF NOT FREE, RESCINDED.] A consent which is not free, is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

§ 878. CONDITIONS LIMITING FREEDOM.] An apparent consent is not real or free when obtained through:

1. Duress.
2. Menace.
3. Fraud.
4. Undue influence; or,
5. Mistake.

§ 879. CONSTRUCTION.] Consent is deemed to have been obtained through one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

§ 880. KINDS OF DURESS.] Duress consists in:

1. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.
2. Unlawful detention of the property of any such person: or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

§ 881. FORMS OF MENACE.] Menace consists in a threat:

1. Of such duress as is specified in the first and third subdivisions of the last section.
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,
3. Of injury to the character of any such person.

§ 882. KINDS OF FRAUD.] Fraud is either actual or constructive.

§ 883. ACTUAL FRAUD DEFINED.] Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

§ 884. CONSTRUCTIVE.] Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

§ 885. QUESTION OF FACT.] Actual fraud is always a question of fact.

§ 886. KINDS OF UNDUE INFLUENCE.] Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

§ 887. MISTAKE DIVIDED.] Mistake may be either of fact or of law.

§ 888. MUST NOT BE ILLEGAL.] Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

§ 889. MISTAKE OF LAW.] Mistakes of law constitute a mistake within the meaning of this article only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

§ 890. OF FOREIGN LAWS.] Mistake of foreign laws is a mistake of fact.

§ 891. MUTUAL CONSENT DEFINED.] Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

§ 892. HOW COMMUNICATED.] Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

§ 893. SPECIAL MODE OR CONDITION.] If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

§ 894. TRANSMISSION BEGUN IS FULL.] Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

§ 895. ACTS WHICH ARE IN ACCEPTANCE.] Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

§ 896. MUST BE ABSOLUTE.] An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will include the person accepting. A qualified acceptance is a new proposal.

§ 897. REVOCATION OF PROPOSAL.] A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

§ 898. REVOCATIONS CLASSED.] A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 892 and 894, before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

§ 899. SUBSEQUENT CONSENT.] A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

§ 900. BENEFITS INCLUDE OBLIGATIONS.] A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

§ 901. DEFINITION.] The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

§ 902. REQUISITES OF OBJECT.] The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

§ 903. IMPOSSIBILITY DEFINED.] Everything is deemed possible except that which is impossible in the nature of things.

§ 904. SINGLE UNLAWFUL OBJECT VOIDS.] Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

§ 905. LAWFUL PART VALID.] Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest.

CHAPTER V.

CONSIDERATION.

§ 906. GOOD CONSIDERATION DEFINED.] Any benefit conferred, or agreed to be conferred, upon the promiser, by any other person, to which the promiser is not lawfully entitled, or any prejudice suffered, or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promiser, is a good consideration for a promise.

§ 907. MORAL OR LEGAL—HOW FAR GOOD.] An existing legal obligation resting upon the promiser, or a moral obligation, originating in some benefit conferred upon the promiser, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

§ 908. LAWFUL DEFINED.] The consideration of a contract must be lawful within the meaning of section 972.

§ 909. EFFECT OF ILLEGALITY.] If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

§ 910. EXECUTED OR EXECUTORY CONSIDERATION.] A consideration may be executed or executory, in whole or in part. In so far as it is executory, it is subject to the provisions of chapter IV of this title.

§ 911. EXECUTORY—HOW DETERMINED.] When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specific standard.

§ 912. MEASURE OF VALUE.] When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

§ 913. EXCLUSIVE IMPOSSIBILITY VOID.] Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

§ 914. SAME—PRESUMPTION—BURDEN.] 1. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

2. A written instrument is presumptive evidence of a consideration.

3. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II.

MANNER OF CREATING CONTRACTS.

§ 915. EXPRESS OR IMPLIED.] A contract is either express or implied.

§ 916. EXPRESS DEFINED.] An express contract is one, the terms of which are stated in words.

§ 917. IMPLIED.] An implied contract is one, the existence and terms of which are manifested by conduct.

§ 918. WHAT MAY BE ORAL.] All contracts may be oral, except such as are specially required by statute to be in writing.

§ 919. MAY BE ENFORCED AGAINST FRAUD.] Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

§ 920. CONTRACTS WHICH MUST BE WRITTEN.] The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

One—An agreement that, by its terms, is not to be performed within a year from the making thereof.

Two—A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 1653 of this code.

Three—An agreement made upon consideration of marriage, other than a mutual promise to marry.

Four—An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale was made, is a sufficient memorandum.

Five—An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

§ 921. WRITING EXCLUDES ORAL.] The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

§ 922. EFFECT ON DELIVERY.] A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

§ 923. APPLY TO ALL CONTRACTS.] The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional apply to all written contracts.

§ 924. HOW SEAL AFFIXED.] A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

§ 925. SEALED AND UNSEALED ALIKE.] All distinctions between sealed and unsealed instruments are abolished.

TITLE III.

INTERPRETATION OF CONTRACTS.

§ 926. SAME RULES FOR PUBLIC OR PRIVATE.] All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

§ 927. EFFECT TO BE GIVEN.] A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

§ 928. INTENTION ASCERTAINED.] For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

§ 929. LANGUAGE GOVERNS.] The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

§ 930. FROM WRITING IF POSSIBLE.] When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this title.

§ 931. ERROR ONLY DISREGARDED.] When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

§ 932. EFFECT TO EVERY PART.] The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.

§ 933. SEVERAL CONTRACTS, TOGETHER.] Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

§ 934. INTERPRETATION FAVORS VALIDITY.] A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

§ 935. WORDS IN USUAL SENSE, UNLESS.] The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

§ 936. TECHNICAL WORDS.] Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

§ 937. LAW OF PLACE.] A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

§ 938. CIRCUMSTANCES EXPLAIN.] A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

§ 939. RESTRICTED TO INTENTION.] However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

§ 940. SENSE OF BELIEF GIVEN.] If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promiser believed, at the time of making it, that the promisee understood it.

§ 941. PART SUBORDINATE TO WHOLE.] Particular clauses of a contract are subordinate to its general intent.

§ 942. WRITTEN AND ORIGINAL PARTS CONTROL.] Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts, and the parts which are purely original, control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

§ 943. REPUGNANCE—HOW RECONCILED.] Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract.

§ 944. INCONSISTENT WORDS REJECTED.] Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

§ 945. Against party causing uncertainty.] In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promiser is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

§ 946. Reasonable stipulations implied.] Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied in respect to matters concerning which the contract manifests no contrary intention.

§ 947. Necessary incidents implied.] All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

§ 948. No time, reasonable time.] If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

§ 949. When time is essence.] Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

§ 950. Promise-joint and several.] Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

§ 951. Singular number.] A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

§ 952. Executed—defined.] An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

§ 953. What is unlawful.] That is not unlawful which is:

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

§ 954. Certain contracts unlawful.] All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

§ 955. PENALTIES VOID.] Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

§ 956. FIXING DAMAGES VOID.] Every contract, by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by the next section.

§ 957. EXCEPTION.] The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

§ 958. RESTRAINTS ON LEGAL PROCEEDINGS.] Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

§ 959. SAME OF EMPLOYMENT.] Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

§ 960. EXCEPTION OF GOOD WILL.] One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

§ 961. PARTNERS—SAME.] Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

§ 962. RESTRAINT OF MARRIAGE.] Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. Contracts, how extinguished.
II. Rescission.
III. Alteration and cancellation.

CHAPTER I.

CONTRACTS—HOW EXTINGUISHED.

§ 963. MANNER.] A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

CHAPTER II.

RESCISSION.

§ 964. RESCISSION EXTINGUISHES.] A contract is extinguished by its rescission.

§ 965. CASES WHEN PARTY MAY RESCIND.] A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or

5. By consent of all the other parties.

§ 966. RESCISSION ALLOWED IN ESSENTIAL MISTAKE.] A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

§ 967. RESCISSION, HOW AND WHEN.] Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party every thing of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

§ 968. WRITING EXTINGUISHES ORAL.] A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

§ 969. HOW WRITING ALTERED.] A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

§ 970. DESTRUCTION BY CONSENT.] The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

§ 971. BY ALTERATION—EFFECT] The intentional destruction, cancellation or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

§ 972. OF DUPLICATE—NOT AFFECT.] Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART 3.

OBLIGATIONS IMPOSED BY LAW.

§ 973. ABSTINENCE FROM INJURY.] Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

§ 974. DAMAGES FOR DECEIT.] One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

§ 975. DECEITS CLASSED.] A deceit, within the meaning of the last section, is either:

1. The suggestion as a fact, of that which is not true, by one who does not believe it to be true.

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

§ 976. UPON THE PUBLIC.] One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

§ 977. RESTORATION.] One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse. must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

§ 978. VOLUNTARY, WHEN DEMAND.] The restoration required by the last section must be made without demand; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

§ 979. WILLFUL ACTS—NEGLIGENCE.] Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

§ 980. OTHER OBLIGATIONS.] Other obligations are prescribed by the first and second divisions of this code.

PART 4.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE I. Sale.
II. Exchange.
III. Deposit.
IV. Loan.
V. Hiring.
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IX. Agency.
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TITLE I.

SALE.

CHAPTER I. General provisions.
II. Rights and obligations of the seller.
III. Rights and obligations of the buyer.
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CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I. Sale.
II. Agreements for sale.
III. Form of the contract.

ARTICLE I.—SALE.

§ 981. SALE DEFINED. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

§ 982. SUBJECT OF SALE.] The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.—AGREEMENTS FOR SALE.

§ 983. CLASSES OF SAME.] An agreement for sale is either:

1. An agreement to sell.
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

§ 984. TO SELL DEFINED.] An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

§ 985. TO BUY.] An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

§ 986. TO SELL AND BUY.] An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him, and to pay a price therefor.

§ 987. WHAT SUBJECT OF CONTRACT.] Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.

§ 988. SALE OF REALTY.] An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

§ 989. USUAL COVENANTS.] An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance, general warranty, and against incumbrances.

§ 990. SUBSTANCE THEREOF.] The covenants mentioned in the last section must be in substance as follows:

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

ARTICLE III.—FORM OF THE CONTRACT.

§ 991. STATUTE OF FRAUDS—PERSONAL.] No sale of personal property, or agreement to buy or sell it for a price of fifty dollars or more, is valid, unless:

One—The agreement or some note or a memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or, Two—The buyer accepts and receives part of the things sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

Three—The buyer, at the time of sale, pays a part of the price.

§ 992. CONTRACT TO MANUFACTURE.] An agreement to manufacture a thing from materials furnished by the manufacturer or by another person, is not within the provisions of the last section.

§ 993. CONTRACT FOR SALE OF REAL PROPERTY.] No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

§ 994. FORM OF TRANSFER.] The form of a transfer of real property is described by the chapter on such transfers.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I. Rights and duties before delivery.
II. Delivery.
III. Warranty.

ARTICLE I.—RIGHTS AND DUTIES BEFORE DELIVERY.

§ 995. SELLER ACTS AS DEPOSITARY.] After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

§ 996. SELLER MAY RESELL.] If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller, after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by the title on liens.

ARTICLE II.—DELIVERY.

§ 997. DELIVERY ON DEMAND.] One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

§ 998. DELIVERY WHERE.] Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or, if it is not then in extistence, it is deliverable at the place where it is produced.

§ 999. EXPENSE OF TRANSPORTATION.] One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

§ 1000. NOTICE OF OPTION—WAIVED.] When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

§ 1001. BUYER'S DIRECTIONS GOVERN SENDING.] If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

§ 1002. REASONABLE HOURS. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.—WARRANTY.

§ 1003. DEFINITION.] A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future.

§ 1004. NOT IMPLIED BY MERE SALE.] Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

§ 1005. WARRANTY OF TITLE TO PERSONALTY.] One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto.

§ 1006. OF QUALITY BY SAMPLE.] One who sell or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

§ 1007. SELLER KNOWS BUYER RELIES, &C.] One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the extstence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

§ 1008. MERCHANDISE NOT IN EXISTENCE.] One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so, at the place of delivery, as can be secured by reasonable care.

§ 1009. AGAINST LATENT DEFECTS.] One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

§ 1010. FIT FOR PURPOSE.] One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

§ 1011. INACCESSIBLE MERCHANDISE.] One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

§ 1012. TRADE MARK GENUINE.] One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that mark to be genuine, and lawfully used.

§ 1013. MARKS OF QUALITY.] One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

§ 1014. VALIDITY OF INSTRUMENT.] One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations or its invalidity for any cause.

§ 1015. FOOD SOUND AND WHOLESOME.] One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome.

§ 1016. SALE OF GOOD WILL.] One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

§ 1017. UPON JUDICIAL SALE.] Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

§ 1018. GENERAL WARRANTY—EFFECT.] A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him, without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 1019. BUYER TO PAY AND TAKE AWAY.] A buyer must pay the price of the thing sold on its delivery; and must take it away within a reasonable time after the seller offers to deliver it.

§ 1020. RIGHT TO INSPECT.] On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

§ 1021. BUYER MAY RESCIND FOR BREACH, ETC.] The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

§ 1022. DEFINITION.] A sale by auction is a sale by public outcry to the highest bidder on the spot.

§ 1023. WHEN SALE COMPLETE.] A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

§ 1024. WITHDRAWAL OF BID.] Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

§ 1025. WITHIN CONDITIONS.] When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

§ 1026. ABSOLUTE RIGHT OF BIDDER.] If, at a sale by auction, the auctioneer having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto; the highest bidder in good faith has an absolute right to the completion of the sale to him; and upon such a sale, bids by the seller or any agent for him are void.

§ 1027. BY BIDDING—FRAUD.] The employment by a seller at a sale at auction, without the knowledge of the buyer, of any person to bid at the sale, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

§ 1028. AUCTIONEER'S MEMORANDUM.] When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

§ 1029. DEFINITION.] Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

§ 1030. VALIDITY OF CONTRACT.] The provisions of section 991 apply to all exchanges in which the value of the thing to be given by either party is fifty dollars or more.

§ 1031. EACH PARTY A SELLER.] The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

§ 1032. WARRANTY THAT MONEY GENUINE.] On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I. Deposit in General.
II. Deposit for Keeping.
III. Deposit for Exchange.

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. Nature and Creation of Deposit.
II. Obligations of the Depositary.

ARTICLE I.—NATURE AND CREATION OF DEPOSIT.

§ 1033. TWO CLASSES.] A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

§ 1034. VOLUNTARY.] A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

§ 1035. INVOLUNTARY—KINDS.] An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

§ 1036. MUST TAKE CHARGE.] The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it, if able to do so.

§ 1037. FOR KEEPING—SPECIFIC.] A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

§ 1038. FOR EXCHANGE—KIND.] A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.—OBLIGATIONS OF THE DEPOSITARY.

§ 1039. DELIVERY ON DEMAND.] A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1042.

§ 1040. DEMAND NECESSARY.] A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

§ 1041. PLACE OF DELIVERY.] A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

§ 1042. NOTICE TO OWNER OF ADVERSE CLAIM.] A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

§ 1043. SAME OF WRONGFUL DETENTION.] A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

§ 1044. DELIVERY TO DISAGREEING OWNERS.] If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I. General Provisions.
II. Gratuitous Deposit.
III. Storage.
IV. Inn Keepers.
V. Finding.

ARTICLE I.—GENERAL PROVISIONS.

§ 1045. INDEMNITY.] A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

§ 1046. CARE OF ANIMALS.] A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

§ 1047. USE OF DEPOSIT FORBIDDEN.] A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

§ 1048. DAMAGES FOR WRONGFUL USE.] A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

§ 1049. SALE OF PERISHING THING.] If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

§ 1050. PRESUMED NEGLIGENCE FOR INJURY, ETC.] If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

§ 1051. SERVICES BY DEPOSITARY.] So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

§ 1052. MEASURE OF DAMAGES.] The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

ARTICLE II.—GRATUITOUS DEPOSIT.

§ 1053. DEFINITION.] Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

§ 1054. INVOLUNTARY.] An involuntary deposit is gratuitous, the depositary being entitled to no reward.

§ 1055. SLIGHT CARE AT LEAST.] A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

§ 1056. WHEN DUTIES CEASE.] The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 1035, cannot give such notice until the emergency that gave rise to the deposit is past.

ARTICLE III.—STORAGE.

§ 1057. DEPOSITARY FOR HIRE.] A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

§ 1058. ORDINARY CARE.] A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

§ 1059. RATE OF COMPENSATION.] In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

§ 1060. TERMINATION OF DEPOSIT.] In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

§ 1061. SAME—FULL TIME PAID.] Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE IV.—INNKEEPERS.

§ 1062. LIABILITY OF KEEPER OF INN OR BOARDING HOUSE.] An innkeeper or keeper of a boarding house, is liable for all losses of, or injuries to, personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn or boarding house, and upon such property, the innkeeper or keeper of a boarding house, has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessaries by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed in this code for the sale of pledged property.

§ 1063. HOW EXEMPTED FROM.] If any innkeeper or boarding house keeper keeps a fire-proof safe, and gives notice to a guest or boarder, either personally, or by putting up a printed notice in a prominent place in the room occupied by the guest or boarder, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable except so far as his own acts contribute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest or boarder for present use.

ARTICLE V.—FINDING.

§ 1064. FINDER A DEPOSITARY.] One who finds a thing lost, is not bound to take charge of it; but if he does so, he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

§ 1065. MUST NOTIFY OWNER.] If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

§ 1066. CLAIMANT MUST PROVE.] The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

§ 1067. REWARD FOR SERVICES.] The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

§ 1068. Exoneration by storage.] The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

§ 1069. May sell—when.] The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two-thirds of its value.

§ 1070. Manner of sale.] A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

§ 1071. Surrender of thing to finder.] The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

§ 1072. Intentionally abandoned.] The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

§ 1073. Transfers title.] A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

Chapter I. Loan for Use.
II. Loan for Exchange.
III. Loan for Money.

CHAPTER I.

LOAN FOR USE.

§ 1074. Definition.] A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

§ 1075. Title and increase to lender.] A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

§ 1076. CARE BY BORROWER.] A borrower for use must use great care for the preservation in safety in good condition of the thing lent.

§ 1077. OF LIVING ANIMAL.] One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

§ 1078. DEGREE OF SKILL.] A borrower for use is bound to have and to exercise such skill in the care of the thing lent, as he causes the lender to believe him to possess.

§ 1079. REPAIR OF INJURIES.] A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

§ 1080. USES LIMITED.] The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

§ 1081. RE-LENDING FORBIDDEN.] The borrower of a thing for use must not part with it to a third person without the consent of the lender.

§ 1082. EXPENSES DURING LOAN.] The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

§ 1083. LENDER LIABLE FOR DEFECTS.] The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

§ 1084. LENDER MAY REQUIRE RETURN.] The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

§ 1085. RETURNABLE WITHOUT DEMAND.] If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

§ 1086. PLACE OF RETURN.] The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

§ 1087. DEFINITION.] A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

§ 1088. SAME.] A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

§ 1089. TITLE IN BORROWER—RIGHTS.] By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

§ 1090. LENDER CANNOT MODIFY CONTRACT.] A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

§ 1091. SECTIONS APPLICABLE.] Sections 1083, 1085 and 1086, apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

§ 1092. DEFINITION—FOR MERE USE.] A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

§ 1093. REPAYMENT IN CURRENT FUNDS.] A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

§ 1094. LOAN PRESUMES INTEREST.] Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

§ 1095. INTEREST DEFINED.] Interest is the compensation allowed for the use, or forbearance, or detention of money, or its equivalent.

§ 1096. ANNUAL RATE.] When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

§ 1097. LEGAL INTEREST SEVEN PER CENT.] Under an obligation to pay interest, no rate being specified, interest is payable at the rate of seven per centum per annum, and in the like proportion for a longer or shorter time; but in the computation of interest for less than a year, three hundred and sixty days are deemed to constitute a year.

§ 1098. HIGHEST RATE, TWELVE.] 1. The highest rate of interest which it shall be lawful for any person to take, receive, retain, or contract for in this territory, shall be twelve per cent. per annum, and at the same rate for a shorter time.

2. Unless, within the above limitation, there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of seven per cent. per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent, or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him.

§ 1099. DISCOUNT—LIMITATION.] The interest which would become due at the end of the term for which a loan is made, not exceeding one year's interest in all, may be deducted from the loan in advance if the parties thus agree.

§ 1100. USURY FORFEITS INTEREST ONLY.] A person taking, receiving, retaining, or contracting for any higher rate of interest than the rate of twelve per cent. per annum, shall forfeit all the interest so taken, received, retained, or contracted for; it being the intent and meaning of this section not to provide a forfeiture of any portion of the principal. When a greater rate of interest has been paid than twelve per cent. per annum, the person paying it, or his personal representative, may recover the excess from the person taking it, or his personal representative, in an action in the proper court.

§ 1101. JUDGMENTS—SEVEN PER CENT.] Interest is payable on judgments recovered in the courts of this territory, at the rate of seven per cent. per annum, and no greater rate, but such interest must not be compounded in any manner or form.

§ 1102. SAME RATE AFTER BREACH.] Any legal rate of interest stipulated by a contract, remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

TITLE V.

HIRING.

CHAPTER I. Hiring in General.
II. Hiring of Real Property.
III. Hiring of Personal Property.

CHAPTER I.

HIRING IN GENERAL.

§ 1103. DEFINITION.] Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

§ 1104. INCREASE TO HIRER.] The products of a thing hired, during the hiring, belong to the hirer.

§ 1105. QUIET POSSESSION.] An agreement to let upon hire, binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

§ 1106. ORDINARY CARE] The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

§ 1107. REPAIRS BY HIRER.] The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

§ 1108. USE FOR PURPOSE LET.] When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use, in all events, or may treat the contract as thereby rescinded.

§ 1109 HIRING TERMINATED BY LETTER] The letter of a thing may terminate the hiring, and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses, or permits a use of the thing hired, in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 1110. BY HIRER.] The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was, and which the latter had, at the time of the hiring, reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

§ 1111. BY OTHER EVENTS] The hiring of a thing terminates:

1. At the end of the term agreed upon.

2. By the mutual consent of the parties.

3. By the hirer acquiring a title to the thing hired, superior to that of the letter; or,

4. By the destruction of the thing hired.

§ 1112. BY DEATH OF PARTY, OR.] If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

§ 1113. PROPORTIONATE PART.] When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

§ 1114. DWELLING MADE FIT BY LESSOR.] The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof; except that the lessee must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

§ 1115. WHEN LESSEE MAY REPAIR] If, within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

§ 1116. PRESUMED FOR ONE YEAR.] A hiring of real property, other than lodgings, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

§ 1117. RENT TERM LIMITS LODGING.] A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

§ 1118. CONTINUED POSSESSION RENEWS LEASE.] If a lessee of real property remains in possession thereof, after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

§ 1119. PRESUMED UNLESS NOTICED.] A hiring of real property, for a term not specified by the parties, is deemed to be renewed, as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

§ 1120. RENT—WHEN PAYABLE] When there is no contract or usage to the contrary, the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

§ 1121. MUST INFORM LANDLORD—TO STRANGER.] Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

2. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

§ 1122. PART OF ROOM INCLUDES ALL.] One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

§ 1123. LETTER'S OBLIGATIONS.] One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

§ 1124. ORDINARY EXPENSES.] A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

§ 1125. EXTRAORDINARY EXPENSES.] If a letter fails to fulfill his obligations as prescribed by section 1123 the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

§ 1126. RETURN OF THING HIRED.] At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place which it was at that time.

§ 1127. CHARTER-PARTY.] The contract by which a ship is let is termed a charter-party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

TITLE VI.

SERVICE.

CHAPTER I. Service with Employment.
II. Particular Employment.
III. Service without Employment.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

ARTICLE I. Definition of Employment.
II. Obligations of the Employer.
III. Obligations of the Employe.
IV. Termination of Employment.

ARTICLE I.—DEFINITION OF EMPLOYMENT.

§ 1128. DEFINITION.] The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer or of a third person.

ARTICLE II.—OBLIGATIONS OF THE EMPLOYER.

§ 1129. INDEMNITY TO EMPLOYE.] An employer must indemnify his employe, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

§ 1130. CO-EMPLOYES.] An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employe.

§ 1131. EMPLOYER'S NEGLIGENCE.] An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

ARTICLE III.—OBLIGATIONS OF THE EMPLOYE.

§ 1132. GRATUITOUS EMPLOYE.] One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance he must use at least slight care and diligence therein.

§ 1133. SAME.] One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

§ 1134. SAME—POWER OF ATTORNEY.] A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

§ 1135. DUTIES OF EMPLOYE FOR REWARD.] One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

§ 1136. SAME FOR HIS OWN BENEFIT.] One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

§ 1137. PERSONAL SERVICE CONTRACT LIMITED.] A contract to render personal service, other than a contract of apprenticeship, as provided in the title on master and servant, cannot be enforced against the employe beyond the term of two years from the commencement of service under it, but if the employe voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

§ 1138. MUST OBEY EMPLOYER.] An employe must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this title, except where such obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the employe, or in case of an emergency which, according to the best information which the employe can with reasonable diligence obtain, the employer did not contemplate, in which he cannot, with reasonable diligence, be consulted, and in which non-compliance is judged by the employe, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases, the employe must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.

§ 1139. MUST CONFORM TO USAGE] An employe must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

§ 1140. REASONABLE SKILL, UNLESS.] An employe is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

§ 1141. SUCH SKILL AS HE POSSESSES.] An employe is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

§ 1142. WHAT BELONGS TO EMPLOYER] Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during, or after the expiration of, the term of his employment.

§ 1143. DUTY TO ACCOUNT.] An employe must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

§ 1144. NOT TO DELIVER WITHOUT DEMAND.] An employe, who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employe himself.

§ 1145. PREFERENCE TO EMPLOYER] An employe, who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him.

§ 1146. SUBSTITUTE DIRECTLY RESPONSIBLE.] An employe, who is expressly authorized to employ a substitute, is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

§ 1147. RESPONSIBILITY FOR NEGLIGENCE.] An employe, who is guilty of a culpable degree of negligence, is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

§ 1148. SURVIVING EMPLOYE.] Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

§ 1149. CONFIDENTIAL RELATIONS—TRUSTS.] The obligations peculiar to confidential employments are defined in the title on trusts.

ARTICLE IV. — TERMINATION OF EMPLOYMENT.

§ 1150. DEATH AND INCAPACITY OF EMPLOYER—OTHER EVENTS.] Every employment, in which the power of the employe is not coupled with an interest in its subject, is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe; or,
4. By his legal incapacity to act as such.

§ 1151. CONTINUANCE IN CERTAIN CASES.] An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time, without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service, according to the terms of the contract of employment.

§ 1152. TERMINATION AT WILL.] An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

§ 1153. FOR FAULT BY EMPLOYE.] An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employe, in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it.

§ 1154. SAME BY EMPLOYER.] An employment, even for a specified term, may be terminated by the employe at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee.

§ 1155. COMPENSATION WHEN DISMISSED.] An employe, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

§ 1156. SERVICE QUIT FOR CAUSE.] An employe, who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. Master and Servant.
II. Agents.
III. Factors.
IV. Shipmasters.
V. Mates and Seamen.
VI. Ships' Managers.

ARTICLE I.—MASTER AND SERVANT.

§ 1157. SERVANT DEFINED.] A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

§ 1158. PRESUMED TERM—WAGES.] A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

§ 1159. MONTH PRESUMED.] In the absence of any agreement or custom as to the rate or value of wages, the term of service or the time of payment, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

§ 1160. RENEWAL PRESUMED.] Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

§ 1161. TIME OF DOMESTIC SERVICE.] The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

§ 1162. SERVANT MUST ACCOUNT.] A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person.

§ 1163. CAUSES FOR DISCHARGE.] A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.—AGENTS.

§ 1164. AUTHORITY.] An agent must not exceed the limits of his actual authority, as defined by the title on agency.

§ 1165. MUST INFORM PRINCIPAL.] An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

§ 1166. COLLECTING AGENT.] An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

§ 1167. SUB-AGENT'S RESPONSIBILITY.] A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.—FACTORS.

§ 1168. FACTOR DEFINED.] The factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property, for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

§ 1169. MUST OBEY PRINCIPAL.] A factor must obey the instructions of his principal, to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may nevertheless sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

§ 1170. MAY GIVE USUAL CREDIT.] A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the terms of credit, may not extend it.

§ 1171. LIABILITY UNDER GUARANTY COMMISSION.] A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

§ 1172. RELIEVED ONLY BY CONSENT.] A factor who receives property for sale under a general agreement or usage to guaranty the sales, or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE IV.—SHIPMASTERS.

§ 1173. APPOINTED AT PLEASURE OF OWNER.] The master of a ship is appointed by the owner, and holds during his pleasure. The word "ship," as used in this code, shall be construed to mean any boat, vessel, or structure fitted for navigation.

§ 1174. MUST BE ON BOARD—WHEN.] The master of a ship is bound to be always on board when entering or leaving port. The word "port," as used in this code, shall be construed to mean any place on a navigable river or lake where a vessel lands to receive or put off freight or passengers, or for any other purpose, and when a vessel has made a landing it is said to be in port.

§ 1175. PILOTAGE.] Before leaving a port the master of a ship must take a pilot on board, and the navigation of the vessel devolves on him.

§ 1176. POWER OF MASTER OVER SEAMEN] The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by law, being responsible for the abuse of his power.

§ 1177. OVER PASSENGERS.] The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

§ 1178. PRIVATE STORES TAKEN.] If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value or giving security therefor.

§ 1179. MAY ABANDON SHIP—WHEN.] The master of a ship must not abandon it during the voyage, without the advice of the other officers.

§ 1180. MUST TAKE TREASURE.] The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

§ 1181. NOT TRADE ON OWN ACCOUNT.] The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

§ 1182. CARE AND DILIGENCE.] The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

§ 1183. AUTHORITY OF MASTER.] The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the title on agency.

ARTICLE V.—MATES AND SEAMEN.

§ 1184. MATE DEFINED.] The mate of a ship is the officer next in command to the master.

§ 1185. SEAMEN.] All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen, within the provisions of this code.

§ 1186. MASTER ENGAGES AND DISCHARGES.] The mate and seamen of a ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

§ 1187. UNSEAWORTHY VESSEL.] A mate or seaman is not bound to go on a voyage in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

§ 1188. WAGES AND LIEN NOT LOST.] A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

§ 1189. LAW FIXES RIGHTS—UNLESS.] No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

§ 1190. WAGES DEPEND ON FREIGHTAGE.] Except as hereinafter provided, the wages of seamen are due when, and so far only as freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

§ 1191. WHEN WAGES BEGIN.] The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

§ 1192. VOYAGE BROKEN UP.] Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

§ 1193. WRONGFUL DISCHARGE—FULL WAGES.] When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

§ 1194. WAGES NOT LOST BY WRECK.] In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

§ 1195. CERTIFICATE.] A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

§ 1196. DISABLED IN DUTY.] Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding.

§ 1197. EXPENSE OF SICKNESS.] If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

§ 1198. DEATH DURING VOYAGE.] If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

§ 1199. THEFT, ETC., FORFEITS WAGES.] Desertion of the ship without cause, or a justifiable discharge by the master during the voyage for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

§ 1200. CANNOT SHIP GOODS.] A mate or seaman may not, under any pretext, ship goods on his own account, without permission from the master.

§ 1201. EMBEZZLEMENT OR INJURY.] If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or, if it is not known which is the offender, all those of whom negligence or fault may be presumed, must make good the loss.

§ 1202. FURTHER REGULATIONS.] The shipment of officers and seamen, and their rights and duties, are further regulated by law.

ARTICLE VI.—SHIPS' MANAGERS.

§ 1203. MANAGER.] The general agent for the owners, in respect to the care of a ship and freight, is called the manager; if he is a part owner, he is also called the managing owner.

§ 1204. DUTIES.] Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew, and supplies of provisions and stores.

§ 1205. MANAGING OWNER.] A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

§ 1206. VOLUNTARY INTERFERENCE.] One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession, for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service, from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

§ 1207. SALVAGE.] Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from danger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on liens.

TITLE VII.

CARRIAGE.

CHAPTER I. Carriage in General.
II. Carriage of Persons.
III. Carriage of Property.
IV. Carriage of Messages.
V. Common Carriers.

CHAPTER I.

CARRIAGE IN GENERAL.

§ 1208. CONTRACT FOR—KINDS.] The contract of carriage is a contract for the conveyance of property, persons or messages, from one place to another.

§ 1209. INLAND OR MARINE.] Carriage is either:

1. Inland; or,
2. Marine.

§ 1210. CLASSES DEFINED.] Carriers upon the ocean, upon arms of the sea, upon the great lakes, or such other navigable waters or rivers as are within the admiralty jurisdiction of the United States, are marine carriers. All others are inland carriers.

§ 1211. CARRIERS BY SEA.] Rights and duties peculiar to carriers by sea are defined by acts of congress.

§ 1212. GRATUITOUS CARRIERS.] Carriers without reward are subject to the same rules as employes without reward, except so far as is otherwise provided by this title.

§ 1213. SAME—MUST COMPLETE.] A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. Gratuitous Carriage.
II. Carriage for Reward.

ARTICLE I.—GRATUITOUS CARRIAGE OF PERSONS.

§ 1214. ORDINARY CARE.] A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.—CARRIAGE FOR REWARD.

§ 1215. UTMOST CARE—SKILL.] A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

§ 1216. VEHICLES SAFE AND FIT.] A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

§ 1217. NOT OVERLOAD] A carrier of persons for reward must not overcrowd or overload his vehicle.

§ 1218. TREATMENT OF PASSENGERS.] A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

§ 1219. SPEED AND DELAYS.] A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

ARTICLE I. General Definitions.
II. Obligations of the Carrier.
III. Bill of Lading.
IV. Freightage.
V. General Average.

ARTICLE I.—GENERAL DEFINITIONS.

§ 1220. FREIGHT—CONSIGNOR.] Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor, and the person to whom it is to be delivered is called the consignee.

ARTICLE II.—OBLIGATIONS OF THE CARRIER.

§ 1221. DEGREES OF CARE] A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

§ 1222. MUST OBEY DIRECTIONS.] A carrier must comply with the directions of the consignor or consignee, to the same extent that an employe is bound to comply with those of his employer.

§ 1223. WHEN CONFLICTING] When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

§ 1224. STORAGE—DEVIATION.] A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

§ 1225. MANNER OF DELIVERY.] A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

§ 1226. PLACE OF DELIVERY.] If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned and managed by the carrier, it may be delivered at the station nearest the place to which it is addressed.

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address: or if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

§ 1227. NOTICE TO CONSIGNEE.] If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest postoffice.

§ 1228. MAY TERMINATE LIABILITY.] If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

ARTICLE III.—BILL OF LADING.

§ 1229. DEFINITION.] A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

§ 1230. BILL OF LADING NEGOTIABLE] All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

§ 1231. BY DELIVERY.] When a bill of lading is made to bearer, or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement.

§ 1232. EFFECTS OF BILL ON CARRIER.] A bill of lading does not alter the rights or obligation of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

§ 1233. SETS OF BILLS TO CONSIGNOR.] A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him besides all damages thereby occasioned.

§ 1234. DELIVERY ACCORDING TO BILL.] A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

§ 1235. SURRENDER OF BILL ON DELIVERY.] When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.—FREIGHTAGE.

§ 1236. FREIGHTAGE WHEN DUE.] A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

§ 1237. CONSIGNOR PRESUMED LIABLE.] The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

§ 1238. CONSIGNEE—WHEN LIABLE.] The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

§ 1239. NATURAL INCREASE.] No freightage can be charged upon the natural increase of freight.

§ 1240. APPORTIONMENT BY CONTRACT.] If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

§ 1241. BY ACCEPTANCE OF PART.] If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

§ 1242. ACCORDING TO DISTANCE.] If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

§ 1243. EXTRA CARRIAGE.] If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

§ 1244. LIEN.] A carrier has a lien for freightage, which is regulated by the title on liens.

ARTICLE V.—GENERAL AVERAGE.

§ 1245. JETTISON AND GENERAL AVERAGE.] A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

§ 1246. ORDER OF.] A jettison must begin with the most bulky and least valuable articles, so far as possible.

§ 1247. WHO MAY ORDER.] A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

§ 1248. LOSS PROPORTIONED.] The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

§ 1249. RATIO OF ADJUSTMENT.] The proportions in which a general average loss is to be borne, must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost, as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.

§ 1250. VALUES DETERMINED.] In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution

§ 1251. DECK STOWAGE.] The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

§ 1252. OTHER APPLICATION.] The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

§ 1253. CARRIER DELIVERS MESSAGES.] A carrier of messages for reward must deliver them at the place to which they are addressed, or to the persons for whom they are intended.

§ 1254. MUST USE CARE.] A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein.

CHAPTER V.

COMMON CARRIERS.

ARTICLE I. Common Carriers in General.
II. Common Carriers of Persons.
III. Common Carriers of Property.
IV. Common Carriers of Messages.

ARTICLE I.—COMMON CARRIERS IN GENERAL.

§ 1255. DEFINITION.] Every one who offers to the public to carry persons, property or messages, is a common carrier of whatever he thus offers to carry.

§ 1256. MUST ACCEPT ALL.] A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

§ 1257. NO PREFERENCE.] A common carrier must not give preference, in time, price or otherwise, to one person over another, except where expressly authorized by statute.

§ 1258. GOVERNMENT PREFERRED.] A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this territory.

§ 1259. STARTING.] A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

§ 1260. COMPENSATION.] A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

§ 1261. OBLIGATIONS HOW LIMITED.] The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

§ 1262. VOID AGREEMENTS.] A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud or willful wrong, of himself or his servants.

§ 1263. CONSTRUCTION OF CONTRACT.] A passenger, consignor or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

ARTICLE II.—COMMON CARRIERS OF PERSONS.

§ 1264. MUST CARRY BAGGAGE.] A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger, without any charge except for an excess of weight over one hundred pounds to a passenger.

§ 1265. DEFINITION.] Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

§ 1266. LIABILITY FOR LUGGAGE.] The liability of a carrier for luggage received by him with a passenger, is the same as that of a common carrier of property.

§ 1267. CARRIAGE AND DELIVERY OF SAME.] A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs; except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.

§ 1268. MUST PROVIDE VEHICLES.] A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

§ 1269. SEATS FOR PASSENGERS.] A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

§ 1270. BUSINESS RULES.] A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

§ 1271. FARE—WHEN PAYABLE.] A common carrier may demand the fare of passengers either at starting or at any subsequent time.

§ 1272. EJECTION OF PASSENGERS.] A passenger who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place, or near some dwelling house.

§ 1273. NO FARE DUE.] After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

§ 1274. LIEN ON LUGGAGE.] A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

ARTICLE III.—COMMON CARRIERS OF PROPERTY.

§ 1275. LIABILITY OF INLAND CARRIER.] Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 1103 to 1107, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice or weakness, or a spontaneous action, of the property itself.
2. The act of a public enemy of the United States, or of this territory.
3. The act of the law; or,
4. Any irresistible superhuman cause.

§ 1276. WHEN NOT EXEMPT.] A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

§ 1277. LIABILITY FOR DELAY.] A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

§ 1278. MARINE CARRIER.] A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

§ 1279. REV. STAT. UNITED STATES, PAGE 831.] The liability of a common carrier by sea is further regulated by acts of congress.

§ 1280. PERILS OF SEA.] Perils of the sea are from:

1. Storms and waves.
2. Rocks, shoals and rapids.
3. Other obstacles, though of human origin.
4. Changes of climate.
5. The confinement necessary at sea.
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

§ 1281. VALUABLES TO BE DECLARED.] A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state, of time-pieces of any description, of negotiable paper or other valuable writings, of pictures, glass or china ware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight.

§ 1282. BEYOND USUAL ROUTE.] If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

§ 1283. PROOF OF LOSS.] If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

§ 1284. OTHER SERVICES.] In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

ARTICLE IV.—COMMON CARRIERS OF MESSAGES.

§ 1285. ORDER OF MESSAGES.] A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States, or of this territory, on public business.

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

3. Messages giving information relating to the sickness or death of any person.

4. Other messages, in the order in which they were received.

§ 1286. IN OTHER CASES.] A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this territory, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

§ 1287. DAMAGES.] Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUST.

CHAPTER I. Trusts in General.
II. Trusts for the Benefit of Third Persons.

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I. Nature and Creation of a Trust.
II. Obligations of Trustees.
III. Obligations of Third Persons.

ARTICLE I.—NATURE AND CREATION OF A TRUST.

§ 1288 TRUSTS CLASSED.] A trust is either:

1. Voluntary; or,

2. Involuntary.

§ 1289. VOLUNTARY.] A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by one, for the benefit of another.

§ 1290. INVOLUNTARY.] An involuntary trust is one which is created by operation of law.

§ 1291. TRUSTOR AND TRUSTEE.] The person whose confidence creates a trust, is called the trustor; the person in whom the confidence is reposed, is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

§ 1292. WHAT CONSTITUTES TRUSTEE.] Every one who voluntarily assumes a relation of personal confidence with another, is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

§ 1293. PURPOSES OF TRUST.] A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

§ 1294. CREATION AS TO TRUSTOR.] Subject to the provisions of section 279, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose and beneficiary of the trust.

§ 1295. AS TO TRUSTEE.] Subject to the provisions of section 279, a voluntary trust is created, as to the trustee, by any words or acts of his, indicating with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,
2. The subject, purpose and beneficiary of the trust.

§ 1296. TRUSTEE BY HIS OWN WRONG.] One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

§ 1297. BY NEGLIGENCE.] One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE II.—OBLIGATIONS OF TRUSTEES.

§ 1298. GOOD FAITH.] In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter, by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

§ 1299. NOT FOR HIS PROFIT.] A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

§ 1300. TRANSACTIONS FORBIDDEN.] Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary not having power to contract, the district court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

§ 1301. INFLUENCE.] A trustee may not use the influence, which his position gives him, to obtain any advantage from his beneficiary.

§ 1302. ADVERSE TRUST.] No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

§ 1303. ADVERSE INTEREST.] If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

§ 1304. VIOLATION A FRAUD.] Every violation of the provisions of the preceding sections of this article, is a fraud against the beneficiary of a trust.

§ 1305. PRESUMPTION AGAINST TRUSTEE.] All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence.

§ 1306. MINGLING PROPERTY.] A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

§ 1307. LIABILITY.] A trustee who uses or disposes of the trust property, contrary to section 1299 may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

§ 1308. SAME—GOOD FAITH.] A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

§ 1309. CO-TRUSTEES.] A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit, but for no others.

ARTICLE III.—OBLIGATIONS OF THIRD PERSONS.

§ 1310. WHEN INVOLUNTARY TRUSTEES.] Every one to whom property is transferred, in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration.

§ 1311. THIRD PERSONS WHEN NOT BOUND.] One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. Nature and Creation of the Trust.
II. Obligations of Trustees.
III. Powers of Trustees.
IV. Rights of Trustees.
V. Termination of the Trust.
VI. Succession or Appointment of New Trustees.

ARTICLE I.—NATURE AND CREATION OF THE TRUST.

§ 1312. EXPRESS TRUSTS ONLY.] The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

§ 1313. MUTUAL CONSENT.] The mutual consent of a trustor and trustee creates a trust, of which the beneficiary may take advantage at any time prior to its rescission.

§ 1314. APPOINTED BY COURT.] When a trustee is appointed by a court or public officer as such, such court or officer is the trustor, within the meaning of the last section.

§ 1315. DECLARATION.] The nature, extent and object of a trust are expressed in the declaration of trust.

§ 1316. SAME BY TRUSTOR.] All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.—OBLIGATIONS OF TRUSTEES.

§ 1317. MUST OBEY DECLARATION.] A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employe.

§ 1318. DEGREE OF CARE.] A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

§ 1319. APPOINTMENT OF SUCCESSOR.] If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

§ 1320. INVESTMENT BY TRUSTEE.] A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

§ 1321. OMITTED INVESTMENT—PENALTY.] If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

§ 1322. PURCHASED CLAIMS.] A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.—POWERS OF TRUSTEES.

§ 1323. TRUSTEE, GENERAL AGENT.] A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

§ 1324. ALL MUST ACT.] Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

§ 1325. DISCRETIONARY POWERS.] A discretionary power conferred upon a trustee, is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.—RIGHTS OF TRUSTEES.

§ 1326. INDEMNIFICATION.] A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

§ 1327. COMPENSATION.] When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

§ 1328. NOT INCLUDED.] An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.—TERMINATION OF THE TRUST.

§ 1329. BY FULFILLMENT.] A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

§ 1330. IRREVOCABLE.] A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

§ 1331. VACATED.] The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

§ 1332. DISCHARGE OF TRUSTEE.] A trustee can be discharged from his trust only, as follows:

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.
4. By the consent of the beneficiary, if he has capacity to contract.
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the district court.

§ 1333. REMOVAL BY COURT.] The district court may remove any trustee who has violated or is unfit to execute the trust.

ARTICLE VI.—SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 1334. WHEN BY COURT.] The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

§ 1335. SURVIVES TO CO-TRUSTEES.] On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others.

§ 1336. COURT POWERS.] When a trust exists without any appointed trustee, or where all the trustees renounce, die or are discharged, the district court of the county, or judicial subdivision, where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

TITLE IX.

AGENCY.

CHAPTER I. Agency in General.
II. Particular Agencies.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I. Definition of Agency.
II. Authority of Agents.
III. Mutual Obligations of Principals and Third Persons.
IV. Obligations of Agents to Third Persons.
V. Delegation of Agency.
VI. Termination of Agency.

ARTICLE I.—DEFINITION OF AGENCY.

§ 1337. AGENCY DEFINED.] An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

§ 1338. QUALIFICATIONS.] Any person, having capacity to contract, may appoint an agent; and any person may be an agent.

§ 1339. SPECIAL AND GENERAL.] An agent for a particular act or transaction is called a special agent. All others are general agents.

§ 1340. CLASSIFIED.] An agency is either actual or ostensible.

§ 1341. ACTUAL AGENCY.] An agency is actual when the agent is really employed by the principal.

§ 1342. OSTENSIBLE.] An agency is ostensible when the principle intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE II.—AUTHORITY OF AGENTS.

§ 1343. WHAT POWERS.] An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

§ 1344. ANY LAWFUL ACT.] Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

§ 1345. NOT TO DEFRAUD PRINCIPAL.] An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

§ 1346. HOW AUTHORIZED] An agency may be created, and an authority may be conferred, by a precedent authorization, or a subsequent ratification.

§ 1347. NO CONSIDERATION.] A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

§ 1348. FORM OF AUTHORITY.] An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

§ 1349. FORM OF RATIFICATION.] A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or, where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

§ 1350. PART INCLUDES WHOLE.] Ratification of part of an indivisible transaction is a ratification of the whole.

§ 1351. WHEN VOID.] A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

§ 1352. RETROACTIVE, LIMITED.] No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

§ 1353. RESCISSION OF RATIFICATION.] A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

§ 1354. AUTHORITY.] An agent has such authority as the principal, actually or ostensibly, confers upon him.

§ 1355. ACTUAL.] Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess.

§ 1356. OSTENSIBLE.] Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess.

§ 1357. LEGAL CONSTRUCTION.] Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

§ 1358. NECESSARY AUTHORITY.] An agent has authority:

1. To do everything necessary, or proper and usual in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

§ 1359. MAY DISOBEY.] An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

§ 1360. CONSTRUCTION.] When an authority is given partly in general and partly in specific terms the general authority gives no higher powers than those specifically mentioned.

§ 1361. EXCEPTIONS TO GENERAL POWER.] An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so.

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article II, of chapter I, of the last title.

§ 1362. IMPLIED AUTHORITY.] An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

§ 1363. SAME AS TO REALTY.] An authority to sell and convey real property includes authority to give the usual covenants of warranty.

§ 1364. RECEIVE PRICE] A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

§ 1365. LIMITED.] A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 1366. PRINCIPAL AFFECTED BY AGENT.] An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

§ 1367. INCOMPLETE EXECUTION] A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

§ 1368. NOTICE TO BOTH PRESUMED.] As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

§ 1369. EXCEEDED AUTHORITY.] When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

§ 1370. BOUND BY CERTAIN ACTS.] A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability, or parted with value, upon the faith thereof.

§ 1371. PRINCIPAL EXONERATED.] If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent, in good faith, before receiving notice of the creditor's election to hold him responsible.

§ 1372. SET-OFFS AGAINST.] One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set-off, against any claim of the principal arising out of the same, all claims which he might have set-off against the agent before notice of the agency.

§ 1373. CONSTRUCTION OF CONTRACT.] Any instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

§ 1374. AGENTS NEGLIGENCE.] Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in, and as a part of the transaction of such business; and for his willful omission to fulfill the obligations of the principal.

§ 1375. FOR OTHER WRONGS] A principal is responsible for no other wrongs committed by his agent, than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.—OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 1376. WARRANTY OF AUTHORITY.] One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

§ 1377. AGENT TO THIRD PERSONS.] One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction:
2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,
3. When his acts are wrongful in their nature.

§ 1378. *SURRENDER TO THIRD PARTY.] If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

§ 1379. INCAPACITY TO CONTRACT.] The provisions of this article are subject to the provisions of part 1 of the first division of this code.

ARTICLE V.—DELEGATION OF AGENCY.

§ 1380. WHEN AUTHORIZED.] An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.
2. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform.
3. When it is the usage of the place to delegate such powers; or
4. When such delegation is specially authorized by the principal.

§ 1381. AGENT IS PRINCIPAL.] If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

§ 1382. RIGHTFUL SUB-AGENT.] A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.—TERMINATION OF AGENCY.

§ 1383. CLASSIFIED CAUSES.] An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term.
2. The extinction of its subject.

3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

§ 1384. OTHER CAUSES.] Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

1. Its revocation by the principal.
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. Auctioneers.
II. Factors.
III. Shipmasters and Pilots.
IV. Ship's Managers.

ARTICLE I.—AUCTIONEERS.

§ 1385. FROM SELLER, LIMITED.] An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell, according to section 1362.
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold, upon payment of the price.
6. To collect the price; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

§ 1386. TO BIND BOTH PARTIES.] An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the title on sale.

ARTICLE II.—FACTORS.

§ 1387. DEFINED.] A factor is an agent, who is employed to buy or sell property in his own name, and who is intrusted by his principal with the possession thereof, as defined in section 1168.

§ 1388. POWER BEYOND AGENT.] In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured.
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

§ 1389. OSTENSIBLE AUTHORITY.] A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

ARTICLE III.—SHIP MASTERS AND PILOTS.

§ 1390. GENERAL AGENT.] The master of a ship is a general agent for its owner in all matters concerning the same.

§ 1391. BORROW MONEY.] The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

§ 1392. AGENT FOR OWNER OF CARGO.] The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same.

§ 1393. TO CONTRACT.] The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in foreign port may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

§ 1394. TO HYPOTHECATE.] The master of a ship may hypothecate the ship, freightage and cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others.

§ 1395. TO SELL SHIP.] When a ship, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

§ 1396. TO SELL CARGO.] The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

§ 1397. TO PAY RANSOM.] The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo.

§ 1398. WHEN POWER CEASES.] The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

§ 1399. MASTER'S PERSONAL LIABILITY.] Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

§ 1400. SAME TO THIRD PERSONS.] The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.

§ 1401. RESPONSIBILITY FOR PILOT.] The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot whether he employs him or not, he is responsible to third persons.

ARTICLE IV.—SHIP'S MANAGERS.

§ 1402. POWER TO CONTRACT.] A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

§ 1403. LIMITATION OF SAME.] Without special authority, a ship's manager cannot borrow money, or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

TITLE X.

PARTNERSHIP.

CHAPTER I. Partnership in General.
II. General Partnership.
III. Special Partnership.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. What Constitutes a Partnership.
II. Partnership Property.
III. Mutual Obligations of Partners.
IV. Renunciation of Partnership.

ARTICLE I.—WHAT CONSTITUTES A PARTNERSHIP.

§ 1404. DEFINITION.] Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

§ 1405. SHIP OWNERS.] Part owners of a ship do not, by simply using it in joint enterprise, become partners as to the ship.

§ 1406. CONSENT NECESSARY.] A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.—PARTNERSHIP PROPERTY.

§ 1406. CONSIST OF WHAT.] The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby.

§ 1408. INTEREST IN ALL.] The interest of each member of a partnership extends to every portion of its property.

§ 1409. SHARE IN PROFITS AND LOSSES.] In the absence of an agreement on the subject, the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

§ 1410. IMPLIED DIVISION OF LOSS.] An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

§ 1411. PROPERTY APPLIES TO DEBTS.] Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

§ 1412 PRESUMPTION.] Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 1413. ARE TRUSTEES.] The relations of partners are confidential. They are trustees for each other, within the meaning of chapter I of the title on trusts. Their obligations, as such trustees, are defined by that chapter.

§ 1414. GOOD FAITH REQUIRED.] In all proceedings connected with the formation, conduct, dissolution, and liquidation of the partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 1415. MUTUAL LIABILITY]. Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

§ 1416. NO COMPENSATION.] A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.—RENUNCIATION OF PARTNERSHIP.

§ 1417. OF PROFITS—EXONERATES.] A partner may exonerate himself from all future liability to a third person on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on account thereof for the future.

§ 1418. EFFECT OF.] After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

ARTICLE I. What is a General Partnership.
II. Powers and Authority of Partners.
III. Mutual Obligations of Partners.
IV. Liability of Partners.
V. Termination of Partnership.
VI. Liquidation.
VII. Of the Use of Fictitious Names.

ARTICLE I.—WHAT IS A GENERAL PARTNERSHIP.

§ 1419. DEFINITION.] Every partnership that is not formed in accordance with the law concerning special partnership, and every special partnership, so far only as the general partners are concerned, is a general partnership.

ARTICLE II.—POWERS AND AUTHORITY OF PARTNERS.

§ 1420. MAJORITY GOVERN.] Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

§ 1421. EACH A GENERAL AGENT.] Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

§ 1422. LIMITATIONS CLASSIFIED.] A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property, or any portion thereof, to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors.

2. To dispose of the good will of the business.

3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise.

4. To do any act which would make it impossible to carry on the ordinary business of the partnership.

5. To confess a judgment.

6. To submit a partnership claim to arbitration; or,

7. To do any other act not within the scope of the preceding section.

§ 1423. BAD FAITH INEFFECTUAL.] A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 1424. PROFITS TO FIRM.] All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

§ 1425. NO ADVERSE INTEREST.] A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

§ 1426. EXCEPTION.] A partner may engage in any separate business, except as otherwise provided by the last two sections.

§ 1427. MUST ACCOUNT] A general partner, transacting business contrary to the provisions of this article, may be required by any copartner to account to the partnership for the profits of such business.

ARTICLE IV.—LIABILITY OF PARTNERS.

§ 1428. LIABLE TO THIRD PERSON.] Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

§ 1429. FOR EACH OTHERS ACTS.] The liability of general partners for each other's acts is defined by the title on agency.

§ 1430. OF ONE HELD OUT AS PARTNERS.] Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the partnership.

§ 1431. NOT LIABLE.] No one is liable as a partner, who is not such in fact, except as provided by the last section.

ARTICLE V.—TERMINATION OF PARTNERSHIP.

§ 1432. DURATION.] If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

§ 1433. CAUSES OF DISSOLUTION.] A general partnership is dissolved, as to all the partners:

1. By lapse of the time prescribed by agreement for its duration.
2. By the expressed will of any partner, if there is no such agreement.
3. By the death of a partner.
4. By the transfer, to a person not a partner, of the interest of any partner in the partnership property.
5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,
6. By a judgment of dissolution.

§ 1434. PARTIAL DISSOLUTION.] A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his co-partners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

§ 1435. JUDGMENT OF DISSOLUTION.] A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting.

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

§ 1436. NOTICE OF TERMINATION] The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with, and given credit to, the partnership, during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business; to the extent, in either case, to which such persons part with value, in good faith, and in the belief that such partner is still a member of the firm.

§ 1437. NOTICE OF CHANGE] A change of the partnership name, which plainly indicates the withdrawal of a partner, is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication is not notice of the withdrawal of any partner.

ARTICLE VI.—LIQUIDATION.

§ 1438. POWERS AFTER DISSOLUTION.] After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

§ 1439. WHO MAY ACT.] Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

§ 1440. WHO NOT.] If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon the credit thereof.

§ 1441. POWER WHILE ACTING.] A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

§ 1442. PARTNER'S POWER IN LIQUIDATION.] 1. A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of the code of civil procedure.

2. On the death of a partner, the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purposes of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property.

ARTICLE VII.—OF THE USE OF FICTITIOUS NAMES.

§ 1443. CERTIFICATE OF TRUE NAMES.] Except as otherwise provided in the next section, every partnership transacting business in this territory under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the district court of the county or subdivision in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership, and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

§ 1444. FOREIGN PARTNERSHIP.] A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this territory the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

§ 1445. ACKNOWLEDGMENT—PENALTY.] The certificate filed with the clerk of the district court, as provided in section 1443, must be signed by the partners, and acknowledged before some officer authorized to take acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed and the publication made within six months after the passage of this act. Persons doing business as partners contrary to the provisions of this article, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this territory, until they have first filed the certificate and made the publication herein required.

§ 1446. NEW CERTIFICATE.] On every change in the members of a partnership transacting business in this territory under a fictitious name, or designation which does not show the names of the persons interested as partners in the business, except in the cases mentioned in section 1444, a new certificate must be filed with the clerk of the district court, and a new publication made as required by this article on the formation of such partnership.

§ 1447. REGISTRY OF FIRMS] Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership and of each partner therein.

§ 1448. COPIES EVIDENCE.] Copies of the entries of a clerk of the district court, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. Formation of the Partnership.
II. Powers, Rights and Duties of the Partners.
III. Liability of Partners.
IV. Alteration and Dissolution of the Partnership.

ARTICLE I.—FORMATION OF THE PARTNERSHIP.

§ 1449. HOW FORMED.] A special or limited partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business, except banking or insurance.

§ 1450. CONSTITUTION OF.] A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners.

§ 1451. CERTIFIED STATEMENT.] Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which such partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the partners, and their residences, specifying which are general and which are special partners.
4. The amount of capital which each special partner has contributed to the common stock: and,
5. The periods at which such partnership will begin and end.

§ 1452. ACKNOWLEDGED AND FILED.] Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the office of the clerk of the district court of the county or subdivision, and the other recorded in the office of the register of deeds of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds in whose office it is recorded, must be filed in the clerk's office as aforesaid, and recorded in like manner in the office of the register of deeds in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

§ 1453. SUMS CONTRIBUTED.] An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate.

§ 1454. COMPLIANCE REQUIRED.] No special partnership is formed until the provisions of the last five sections are complied with.

§ 1455. CERTIFICATE PUBLISHED.] The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the territory nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing such certificate. In case the publication is not so made, the partnership must be deemed general.

§ 1456. AFFIDAVIT FILED] An affidavit of publication pursuant to the preceding section, made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

§ 1457. RENEWAL—SAME METHOD.] Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

ARTICLE II.—POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

§ 1458. STYLE OF SPECIAL PARTNERSHIP.] The business of a special partnership must be conducted under a name, consisting of the names or surnames of one or more of the general partners only, with or without the addition of the words "and company," or "& Co." Such partnership shall put up in some conspicuous place, on the outside, and in front of the building in which it has its chief place of business, some sign on which shall be painted, in legible English characters, all the names of all the members of such partnership, designating the special partners.

§ 1459. WHO DO BUSINESS.] The general partners only have authority to transact the business of a special partnership.

§ 1460. RELATIONS OF SPECIAL PARTNER.] A special partner may at all times investigate the partnership affairs, and advise his partners or their agents as to their management.

§ 1461. MAY LOAN TO FIRM.] A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances, has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

§ 1462. WHO SUE AND ARE SUED.] In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

§ 1463. WITHDRAWAL OF CAPITAL.] No special partner under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance.

§ 1464. MAY DRAW PROFITS.] A special partner may receive such lawful interest, and such proportion of profits, as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

§ 1465. BECOMES GENERAL PARTNER.] If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

§ 1466. PREFERENTIAL TRANSFERS.] Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership, or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.—LIABILITY OF PARTNERS.

§ 1467. LIABILITY GENERAL PARTNERS.] The general partners in a special partnership are liable to the same extent as partners in a general partnership.

§ 1468. OF SPECIAL PARTNERS.] The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all the creditors of the firm.

2. If he has willfully interfered with the business of the firm, except as permitted in article II of this chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of article II of this chapter, he is liable in like manner.

§ 1469. SAME.] When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.

§ 1470. QUESTIONING EXISTENCE OF.] One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of any error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law.

ARTICLE IV.—ALTERATION AND DISSOLUTION.

§ 1471. SPECIAL BECOMES GENERAL.] A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court and the register of deeds, with whom the original certificate of the partnership was filed, and notice thereof published as is provided in article I of this chapter for the publication of the certificate.

§ 1472. NEW PARTNERS.] New special partners may be admitted into a special partnership, upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged or proved, and filed with the clerk, and recorded in the register's office in which the original certificate was filed, according to the provisions of article I of this chapter.

§ 1473. DISSOLUTION—NOTICE.] A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete, until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded, and filed in the office of the clerk of the district court, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

TITLE XI.

INSURANCE.

CHAPTER I. Insurance in General.
II. Marine Insurance.
III. Fire Insurance.
IV. Life and Health Insurance.

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I. Definition of Insurance.
II. What May be Insured.

ARTICLE I.—DEFINITION OF INSURANCE.

§ 1474. CONTRACT TO INDEMNIFY.] Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability, arising from an unknown or contingent event.

ARTICLE II.—WHAT MAY BE INSURED.

§ 1475. INSURABLE INTEREST.] Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against him, may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

§ 1476. INSURANCE CLASSED.] The most usual kinds of insurance are:

One—Marine insurance.
Two—Fire insurance.
Three—Life insurance.
Four—Health insurance; and
Five—Accident insurance.

§ 1477. LAW GENERAL.] All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.—PARTIES TO THE CONTRACT.

§ 1478. INSURER.] The person who undertakes to indemnify another, by a contract of insurance, is called the insurer, and the person indemnified is called the insured.

§ 1479. WHO MAY INSURE.] Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others.

§ 1480. WHO BE INSURED.] Any one except a public enemy may be insured.

§ 1481. OF MORTGAGED PROPERTY.] Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

§ 1482. SAME.] If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.—INSURABLE INTEREST.

§ 1483. DEFINITION.] Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

§ 1484. CLASSIFIED.] An insurable interest in property may consist in:

1. An existing interest.

2. An inchoate interest founded on an existing interest; or,

3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

§ 1485. CARRIER, &C., HAS.] A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

§ 1486. NOT INSURABLE.] A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

§ 1487. MEASURE OF INTEREST.] The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

§ 1488. WITHOUT INTEREST VOID.] The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

§ 1489. MUST EXIST—WHEN.] An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

§ 1490. EFFECT OF TRANSFER.] Except in the cases specified in the next four sections, and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

§ 1491. TRANSFER AFTER LOSS.] A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

§ 1492. EXCEPTION.] A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

§ 1493. SAME BY DEATH.] A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

§ 1494. BY JOINT OWNERS—EVIDENCE.] 1. A transfer of interest by one of several partners, joint owners or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

2. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

ARTICLE V.—CONCEALMENT AND REPRESENTATION.

§ 1495. DEFINITION.] A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

§ 1496. EFFECT OF.] A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

§ 1497. MUTUAL DISCLOSURES.] Each party to a contract of insurance must communicate to the other in good faith, all facts within his knowledge which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

§ 1498. NOT BOUND TO DISCLOSE.] Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows.

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant.

3. Those of which the other waives communication.

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

§ 1499. LEGAL CONSTRUCTION.] Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

§ 1500. PRESUMED KNOWLEDGE.] Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may effect either the political or material perils contemplated, and all general usages of trade.

§ 1501. RIGHT WAIVED.] The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

§ 1502. ONLY ON INQUIRY.] Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 1518.

§ 1503. FRAUD.] An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

§ 1504. MATTERS OF OPINION.] Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

§ 1505. FORM.] A representation may be oral or written.

§ 1506. WHEN MADE.] A representation may be made at the same time with issuing the policy, or before it.

§ 1507. INTERPRETATION.] The language of a representation is to be interpreted by the same rules as the language of contracts in general.

§ 1508. AS TO FUTURE.] A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

§ 1509. QUALIFY IMPLIED WARRANTY.] A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

§ 1510. WHEN WITHDRAWN.] A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

§ 1511. REFERENCE.] The completion of the contract of insurance is the time to which a representation must be presumed to refer.

§ 1512. INFORMATION AND BELIEF.] When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence.

§ 1513. FALSITY.] A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

§ 1514. EFFECT OF FALSITY.] If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

§ 1515. RULE.] The materiality of a representation is determined by the same rule as the materiality of a concealment.

§ 1516. PROVISIONS APPLY—RESCISSION] 1. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

2. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

ARTICLE VI.—THE POLICY.

§ 1517. DEFINITION.] The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

§ 1518. ESSENTIAL SPECIFICATIONS.] A policy of insurance must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue.

§ 1519. EFFECT OF NAME.] When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

§ 1520. BY TRUSTEE OR AGENT.] When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured, may be indicated by describing him as an agent or trustee, or by other general words in the policy.

§ 1521. Terms must include.] To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

§ 1522. Specific person.] When the description of the insured in a policy is so general that it may comprehend any person, or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

§ 1523. May run to whomsoever.] A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

§ 1524. Transfer.] The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both policy and the thing insured.

§ 1525. Classes.] A policy is either open or valued.

§ 1526. To be ascertained.] An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

§ 1527. Agreed value.] A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

§ 1528. Successive insurance.] A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

§ 1529. Effect of receipt.] An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

§ 1530. Void agreement.] An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.—Warranties.

§ 1531. Classified.] A warranty is either express or implied.

§ 1532. No form.] No particular form of words is necessary to create a warranty.

§ 1533. Express to be written.] Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

§ 1534. Time.] A warranty may relate to the past, present, the future, or to any or all of these.

§ 1535. Construction.] A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

§ 1536. INTENTION MEANS ACT.] A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

§ 1537. OMISSION DOES NOT VOID.] When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

§ 1538. MAY RESCIND.] The violation of a material warranty, or other material provisions of a policy, on the part of either party thereto, entitles the other to rescind.

§ 1539. WHAT AVOIDS.] A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy.

§ 1540. BREACH WITHOUT FRAUD.] A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception, prevents the policy from attaching to the risk.

CHAPTER VIII.

PREMIUM.

§ 1541. WHEN PAYABLE.] An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

§ 1542. RETURN WHEN.] A person insured is entitled to a return of premium, as follows:

One—To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

Two—Where the insurance is made for a definite period of time, and the insured surrenders his policy to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

§ 1543. SAME.] A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

§ 1544. NOT SO FAR AS RISK.] If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

§ 1545. RATABLE RETURN.] In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

§ 1546. CONTRIBUTION.] When an over-insurance is affected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

§ 1547. SAME.] When an over-insurance is effected by successive policies, those only contribute to a return of the premium, who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.—LOSS.

§ 1548. WHEN INSURER LIABLE.] An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

§ 1549. IN OTHER CASES.] An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

§ 1550. EXCEPTION INCLUDES CONSEQUENCES.] Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril, which was not excepted.

§ 1551. ACTS OF INSURED—EFFECT OF.] An insurer is not liable for a loss caused by the willful act of the insured, but he is not exonerated by the negligence of the insured, or of his agents or others.

ARTICLE X.—NOTICE OF LOSS.

§ 1552. NO UNNECESSARY DELAY.] In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

§ 1553. BEST IN HIS POWER.] Where preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

§ 1554. WAIVER OF DEFECTS.] All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

§ 1555. WAIVER OF DELAYS.] Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

§ 1556. REASONABLE DILIGENCE.] If a policy requires, by way of preliminary proof of loss, the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.—DOUBLE INSURANCE.

§ 1557. DEFINITION.] A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

§ 1558. ORDER OF LIABILITY.] In case of double insurance, the several insurers are liable to pay losses thereon as follows:

One—In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

Two—In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss, is to contribute ratably.

ARTICLE XII.—RE-INSURANCE.

§ 1559. DEFINITION.] A contract of re-insurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

§ 1560. DISCLOSURES REQUIRED.] Where an insurer obtains re-insurance, he must communicate all the representations of the original insurer, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk.

§ 1561. PRESUMED NATURE OF.] A re-insurance is presumed to be a contract of indemnity against liability, and not merely against damage.

§ 1562. WHO INCLUDED.] The original insured has no interest in a contract of re-insurance.

CHAPTER II.

MARINE INSURANCE.

ARTICLE I. Definition of Marine Insurance.
II. Insurable Interest.
III. Concealment.
IV. Representations.

V. Implied Warrantees.
VI. The Voyage and Deviation.
VII. Loss.
VIII. Abandonment.
IX. Measure of Indemnity.

ARTICLE I.—DEFINITION OF MARINE INSURANCE.

§ 1563. DEFINITION.] Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.—INSURABLE INTEREST.

§ 1564. OWNER RETAINS.] The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

§ 1565. HYPOTHECATION REDUCES.] The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

§ 1566. DEFINITION.] Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

§ 1567. EXPECTED EARNINGS.] The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against.

§ 1568. SAME.] The interest mentioned in the last section exists, in the case of a charter-party, when the ship has broken ground on the chartered voyage; and, if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

§ 1569. IN PROFITS.] One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

§ 1570. CHARTERER.] The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

ARTICLE III.—CONCEALMENT.

§ 1571. DISCLOSURES.] In marine insurance each party is bound to communicate, in addition to what is required by section 1497, all the information which he possesses, material to the risk, except such as is mentioned in section 1498, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

§ 1572. BELIEF MATERIAL.] In marine insurance information of the belief or expectation of a third person, in reference to a material fact, is material.

§ 1573. PRESUMED KNOWLEDGE.] A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

§ 1574. PARTIAL EXONERATION.] A concealment in marine insurance, in respect to any of the following matters, does not vitiate the entire contract but merely exonerates the insurer from a loss resulting from the risk concealed:

One—The national character of the insured.
Two—The liability of the thing insured to capture and detention.
Three—The liability to seizure from breach of foreign laws of trade.
Four—The want of necessary documents; and,
Five—The use of false and simulated papers.

ARTICLE IV.—REPRESENTATIONS.

§ 1575. FALSITY RESCINDS.] If a representation, by a person insured by contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

§ 1576. SAME.] The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.—IMPLIED WARRANTIES.

§ 1577. SEAWORTHINESS.] In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

§ 1578. DEFINITION OF.] A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

§ 1579. WHEN SEAWORTHY—EXCEPTIONS.] An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencememt of the risk, except in the following cases:

One—When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

Two—When the insurance is upon the cargo, which by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transhipped, be seaworthy at the commencement of its particular voyage.

§ 1580. WHAT INCLUDED IN.] A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as cables and anchors, food, fuel and lights, and other necessary or proper stores and implements for the voyage.

§ 1581. DEGREES OF IN PARTS.] Where different portions of the voyage, contemplated by a policy, differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

§ 1582. DELAYED REPAIRS.] When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect, exonerates the insurer from liability for any loss arising therefrom.

§ 1583. SEAWORTHINESS FOR CARGO.] A ship which is seaworthy for the purpose of an insurance upon the ship, may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

§ 1584. NEUTRAL PAPERS.] Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.—THE VOYAGE AND DEVIATION.

§ 1585. MERCANTILE USAGE.] When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places.

§ 1586. SAME—EXCEPTION.] If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous.

§ 1587. DEVIATION DEFINED] Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage.

§ 1588. PROPER DEVIATIONS.] A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control.

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not.

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

§ 1589. OTHERS IMPROPER.] Every deviation, not specified in the last section, is improper.

§ 1590. EXONERATES INSURER.] An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

ARTICLE VII.—LOSS.

§ 1591. CLASSIFIED.] A loss may be either total or partial.

§ 1592. PARTIAL.] Every loss which is not total is partial.

§ 1593. TOTAL.] A total loss may be either actual or constructive.

§ 1594. CAUSES OF SAME.] An actual total loss is caused by:

1. A total destruction of the thing insured.
2. The loss of the thing by sinking, or by being broken up.
3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,
4. Any other event which entirely deprives the owner of the possession, at the port of destination of the thing insured.

§ 1595. CONSTRUCTIVE TOTAL LOSS.] A constructive total loss is one which gives to a person insured a right to abandon under section 1603.

§ 1596. ACTUAL PRESUMED.] An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

§ 1597. VOYAGE BROKEN UP.] When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

§ 1598. COST OF RESHIPMENT.] In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

§ 1599. PAYMENT WITHOUT NOTICE.] Upon an actual total loss a person insured is entitled to payment without notice of abandonment.

§ 1600. GENERAL AVERAGE LOSS.] Where it has been agreed that an insurance upon a particular thing, or class of things, shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured.

§ 1601. INSURANCE AGAINST TOTAL LOSS.] An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

ARTICLE VIII.—ABANDONMENT.

§ 1602. DEFINITION.] Abandonment is the act by which, after a constructive total loss, a person insured by a contract of marine insurance, declares to the insurer that he relinquishes to him his interest in the thing insured.

§ 1603. WHEN AUTHORIZED.] A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof, in value, is actually lost, or would have to be expended to recover it from the peril.

2. If it is injured to such an extent as to reduce its value more than one-half.

3. If, the thing insured being a ship, the contemplated voyage cannot be lawfully performed, without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo or freightage, the voyage cannot be performed, nor another ship procured by the master within a reasonable time, and with reasonable diligence, to forward the cargo, without incurring the like expenses or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

§ 1604. MUST BE ABSOLUTE.] An abandonment must be neither partial nor conditional.

§ 1605. WHEN MADE.] An abandonment must be made within a reasonable time after information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

§ 1606. WHEN INEFFECTUAL.] Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

§ 1607. FORM OF NOTICE.] Abandonment is made by giving notice thereof to the insurer, which may be done orally or in writing.

§ 1608. REQUISITES OF.] A notice of abandonment must be explicit, and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

§ 1609. NOTICE GOVERNS.] An abandonment can be sustained only upon the cause specified in the notice thereof.

§ 1610. IS A TRANSFER.] An abandonment is equivalent to a transfer by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

§ 1611. PAYMENT ENTITLES TO SALVAGE.] If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

§ 1612. AGENTS OF INSURER.] Upon an abandonment acts done in good faith by those who were agents of the insured, in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

§ 1613. ACCEPTANCE UNNECESSARY.] An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

§ 1614. CONCLUSIVE.] The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and sufficiency of the abandonment.

§ 1615. IRREVOCABLE.] An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

§ 1616. EFFECT ON FREIGHTAGE.] On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned, belongs to the insurer of the ship.

§ 1617. REFUSAL TO ACCEPT.] If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

§ 1618. OMISSION.] If a person insured omits to abandon, he may, nevertheless, recover his actual loss.

ARTICLE IX.—MEASURE OF INDEMNITY.

§ 1619. VALUATION CONCLUSIVE.] A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

§ 1620. PARTIAL LOSS.] A marine insurer is liable, upon a partial loss, only for such proportion of the amount insured by him, as the loss bears to the value of the whole interest of the insured in the property insured.

§ 1621. PROFITS.] Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

§ 1622. VALUATION PROPORTIONED.] In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

§ 1623. PRESUMPTION.] When profits are valued and insured by a contract of marine insurance, a loss of them is couclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

§ 1624. RULES FOR ESTIMATE.] In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including

all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured.

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way, or on arrival.

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

§ 1625. ARRIVAL DAMAGED.] If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port of the thing so damaged bears to the market price it would have brought if sound.

§ 1626. EXPENSES.] A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense, in either case, being in addition to the total loss, if that afterwards occurs.

§ 1627. GENERAL AVERAGE.] A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

§ 1628. CONTRIBUTION.] Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

§ 1629. NEW FOR OLD.] In the case of a partial loss of a ship, or its equipments, the old materials are to be applied toward payment for the new, and whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent. for each month that it has been fastened to the ship.

CHAPTER III.

FIRE INSURANCE.

§ 1630. INCREASING RISK.] An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk entitles an insurer to rescind a contract of fire insurance.

§ 1631. SAME IN USE.] *An alteration in the use or condition of a thing* insured, from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

§ 1632. ACT OF INSURED.] A contract of fire insurance is not affected by any act of the insured, subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk, and is the cause of a loss.

§ 1633. MEASURE OF INDEMNITY.] *If there is no valuation in the* policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

§ 1634. WHEN PAYABLE.] An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

§ 1635. INSURABLE INTEREST.] Every person has an insurable interest in the life and health:

1. Of himself.
2. Of any person on whom he depends wholly or in part for education or support.
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest, vested in him, depends.

§ 1636. ASSIGNEE.] A policy of insurance upon life or health may pass by transfer, will or succession, to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

§ 1637. NOTICE OF TRANSFER.] Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health unless thereby expressly required.

§ 1638. MEASURE OF INDEMNITY.] Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

§ 1639. INDEMNITY DEFINED.] Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

§ 1640. UNLAWFUL.] An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

§ 1641. VALID.] An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

§ 1642. INCLUDES AGENTS.] An agreement to indemnify against the acts of a certain person, applies not only to his acts, and their consequences, but also to those of his agents.

§ 1643. SEVERAL MEANS EACH.] An agreement to indemnify several persons applies to each unless a contrary intention appears.

§ 1644. JOINT AND SEPARATE.] One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.

§ 1645. RULES OF INTERPRETATION.] In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which by want of ordinary care he failed to established in the action.

§ 1646. WHEN A SURETY.] Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

§ 1647. BAIL.] Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

§ 1648. HOW REGULATED.] The obligations of bail are governed by the statutes specially applicable thereto.

TITLE XIII.

GUARANTY.

CHAPTER. I. Guaranty in General.
II. Suretyship.

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I. Definition of Guaranty.
II. Creation of Guaranty.
III. Interpretation of Guaranty.
IV. Liability of Guarantors.
V. Continuing Guaranty.
VI. Exoneration of Guarantors.

ARTICLE I.—DEFINITION OF GUARANTY.

§ 1649. DEFINITION.] A guaranty is a promise to answer for the debt, default or miscarriage of another person.

§ 1650. WITHOUT CONSENT.] A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.—CREATION OF GUARANTY..

§ 1651. CONSIDERATION.] Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

§ 1652. IN WRITING.] Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

§ 1653. EXCEPTION.] A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promiser, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by

one who has received a discharge from an obligation in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

§ 1654. ACCEPTANCE NECESSARY.] A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.—INTERPRETATION OF GUARANTY.

§ 1655. IMPLIED GUARANTY.] In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.

§ 1656. OF SOLVENCY.] A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

§ 1657. RECOVERY.] A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

§ 1658. INSOLVENCY PRESUMED.] In the cases mentioned in section 1656, the removal of the principal from the territory leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.—LIABILITY OF GUARANTORS.

§ 1659. GUARANTY CONSTRUED.] A guaranty is to be deemed unconditional, unless its terms import some condition precedent to the liability of the guarantor.

§ 1660. LIABILITY—WHEN AND HOW.] A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

§ 1661. OF CONDITIONAL OBLIGATION.] Where one guaranties a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

§ 1662. LIMITATION OF OBLIGATION.] The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

§ 1663. ILLEGAL CONTRACT—VOID.] A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.—CONTINUING GUARANTY.

§ 1664. DEFINITION] A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

§ 1665. REVOCATION.] A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.—EXONERATION OF GUARANTORS.

§ 1666. EXONERATION.] A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

§ 1667. VOID PROMISE.] A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

§ 1668. ALTERATION RESCINDED] The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

§ 1669. PART PERFORMANCE.] The acceptance, by a creditor, of any thing in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

§ 1670. Delay no discharge.] Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

§ 1671. Indemnity.] A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

§ 1672. Act of law.] A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

Article I. Who are Sureties.
II. Liability of Sureties.
III. Rights of Sureties.
IV. Rights of Creditors.
V. Letter of Credit.

ARTICLE I.—Who are sureties.

§ 1673. Definition.] A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

§ 1674. Surety who appears principal.] One who appears to be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.—Liability of sureties.

§ 1675. Obligation.] A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

§ 1676. Like other contracts.] In interpreting the terms of a contract of suretyship, the same rules are to be observed in the case of other contracts.

§ 1677. Continues as surety.] Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

§ 1678. Exoneration.] Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

§ 1679. Same.] A surety is exonerated:

1. In like manner with a guarantor.

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.—RIGHTS OF SURETIES.

§ 1680. RIGHTS OF A GUARANTOR.] A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

§ 1681. PROCEEDINGS AGAINST PRINCIPAL.] A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

§ 1682. MAY COMPEL PRINCIPAL.] A surety may compel his principal to perform the obligation when due.

§ 1683. REIMBURSEMENT.] If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefitted by his act, except as prescribed by the next section.

§ 1684. SAME.] A surety, upon satisfying the obligations of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

§ 1685. ENTITLED TO ALL SECURITIES.] A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor, or by a co-surety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

§ 1686. PRINCIPAL'S PROPERTY FIRST.] Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.—RIGHTS OF CREDITORS.

§ 1687. RIGHT TO EVERY SECURITY.—A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation; and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.—LETTER OF CREDIT.

§ 1688. DEFINITION.] A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

§ 1689. TO SEVERAL.] A letter of credit may be addressed to several persons in succession.

§ 1690. WHEN WRITER LIABLE.] The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

§ 1691. CLASSES DEFINED]. A letter of credit is either general or special. When the request for credit, in a letter, is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

§ 1692. GENERAL.] A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

§ 1693. SUCCESSIVE CREDITS ON.] Several persons may successively give credit upon a general letter.

§ 1694. CONTINUING GUARANTY.] If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor; but is to be deemed a continuing guaranty.

§ 1695. NOTICE TO WRITER.] The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

§ 1696. CREDIT MUST AGREE WITH LETTER.] If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

CHAPTER I. Liens in General.
II. Mortgage.
III. Pledge.
IV. Bottomry.
V. Respondentia.
VI. Other Liens.
VII. Stoppage in Transit.

CHAPTER I.

LIENS IN GENERAL.

ARTICLE I. Definition of Liens.
II. Creation of Liens.
III. Effect of Liens.
IV. Priority of Liens.
V. Redemption from Liens.
VI. Extinction of Liens.

ARTICLE I.—DEFINITION OF LIENS.

§ 1697. DEFINITION.] A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

§ 1698. CLASSIFIED.] Liens are either general or special.

§ 1699. GENERAL LIEN.] A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

§ 1700. SPECIAL—PRIOR LIENS.] 1. A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

2. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

§ 1701. THIS CHAPTER APPLIES.] Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.—CREATION OF LIENS.

§ 1702. TWO METHODS.] A lien is created:

1. By contract of the parties; or,
2. By operation of law.

§ 1703. WHEN BY LAW.] No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

§ 1704. ON FUTURE INTEREST.] An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent of such interest.

§ 1705. IMMEDIATE EFFECT.] A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.—EFFECT OF LIENS.

§ 1706. TRANSFERS NO TITLE.] Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

§ 1707. VOID CONTRACTS.] All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby; and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in section 1071.

§ 1708. DOES NOT IMPLY OBLIGATION.] The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

§ 1709. EXTENT LIMITED.] The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

§ 1710. NO COMPENSATION TO HOLDER.] One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1082 and 1083.

ARTICLE IV.—PRIORITY OF LIENS.

§ 1711. ACCORDING TO DATE] Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

§ 1712. PRIORITY OF PURCHASE PRICE.] A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

§ 1713. ORDER OF RESORT.] Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

First—To the things upon which he has an exclusive lien.

Second—To the things which are subject to the fewest subordinate liens.

Third—In like manner inversely to the number of subordinate liens upon the same thing; and,

Fourth—When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

1. To the things which which have not been transferred since the prior lien was created.

2. To the things which have been so transferred without a valuable consideration; and,

3. To the things which have been so transferred for a valuable consideration.

ARTICLE V.—REDEMPTION OF LIEN.

§ 1714. RIGHT OF EVERY OWNER.] Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

§ 1715. INFERIOR—SUBROGATION.] One who has a lien, inferior to another upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

§ 1716. HOW MADE.] Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.—EXTINCTION OF LIENS.

§ 1717. DEEMED ACCESSORY.] A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

§ 1718. SALE OR CONVERSION BY LIENOR.] The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

1719. NOT BY MERE LAPSE OF TIME.] A lien is not extinguished by the mere lapse of the time within which, under the provisions of the code of civil procedure, an action can be brought upon the principal obligation.

§ 1720. APPORTIONMENT OF LIEN.] The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

§ 1721. WHEN RESTORATION EXTINGUISHES.] The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGE.

ARTICLE I. Mortgage in General.
II. Mortgage of Real Property.
III. Mortgage of Personal Property.

ARTICLE I.—MORTGAGE IN GENERAL.

§ 1722. DEFINITION—WRITTEN FORMALITIES.] 1. Mortgage is a contract, by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

2. A mortgage of real property can be created, renewed or extended, only by writing, executed with the formalities required in the case of a grant of real property.

§ 1723. SPECIAL LIEN.] The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

§ 1724. WHAT DEEMED A MORTGAGE.] Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

§ 1725. EXCEPTIONS.] Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

§ 1726. DEFEASIBILITY MAY BE PROVED.] The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer, for value and without notice, though the fact does not appear by the terms of the instrument.

§ 1727. RULES GOVERNING MORTGAGE.] 1. Any interest in property, which is capable of being transferred may be mortgaged.

2. Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

3. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

4. The assignment of a debt secured by mortgage carries with it the security.

§ 1728. ON PROPERTY ADVERSELY HELD.] A mortgage may be created upon property held adversely to the mortgagor.

2. A mortgage of property held adversely to the mortgagor takes effect from the time at which he, or one claiming under him, obtains possession of the property; but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage.

§ 1729. POWER OF SALE.] A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

§ 1730. POWER OF ATTORNEY.] 1. A power of sale under a mortgage is a trust, and as to real property, can be executed only in the manner prescribed by the code of civil procedure.

2. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

§ 1731. LIEN OF MORTGAGE.] A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more.

§ 1732. AGAINST WHOM.] A mortgage is a lien upon the property mortgaged, in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers or incumbrancers in good faith, without notice and for value, and except as otherwise provided by article III of this chapter.

§ 1733 POSSESSION—IMPAIRING SECURITY.] 1. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

2. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the moregagee's security.

§ 1734. FORECLOSURE.] A mortgagee may foreclose the right of redemption of the mortgagor, in the manner prescribed by the code of civil procedure.

§ 1735. ASSIGNMENT—RECORD—DISCHARGE.] 1. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

2. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond or other instrument.

3. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the register, who must certify the acknowledgment in form substantially as follows:

Signed and acknowledged before me, this .... day of ...., in the year....

A B, Register.

4. A recorded mortgage, if not discharged as provided in the preceding subdivision, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged, or proved and certified, as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, or otherwise satisfied and discharged.

5. A certificate of the discharge of a mortgage, and a proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded.

6. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, and must, at the expense of the

mortgagor, acknowledge the execution thereof so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgage, who refuses to execute and deliver to the mortgagor the certificate of discharge, and to acknowledge the execution thereof, or to enter satisfaction or cause satisfaction to be entered of the mortgage, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and also forfeit to him or them the sum of one hundred dollars.

ARTICLE II.—MORTGAGE OF REAL PROPERTY.

§ 1736. FORM.] A mortgage of real property may be made in substantially the following form:

This mortgage, made the .... day of ...., in the year ...., by A B, of ......, mortgagor, to C D, of ...., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property,) as security for the payment to him of .... dollars, on or before the .... day of ...., in the year........, with interest thereon (or as security for the payment of an obligation, describing it, etc.)

A B.

§ 1737. MORTGAGE FOLLOWS PROPERTY.] When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid.

§ 1738. EXECUTED LIKE GRANTS.] Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

§ 1739. NOTICE BY RECORD.] The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers.

§ 1740. RECORD OF ACCOMPANYING PAPER.] Every grant of real property, or of any estate therein, which appears, by any other writing, to be intended as a mortgage within the meaning of chapter I of this title, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together, at the same time and place, the grantee can derive no benefit from such record.

§ 1741. DEFEASANCE MUST BE RECORDED.] When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated.

ARTICLE III.—MORTGAGE OF PERSONAL PROPERTY.

§ 1742. FORM.] A mortgage of personal property may be made in substantially the following form:

This mortgage, made the ...... day of ...., in the year ......, by A B, of .... by occupation a .... mortgagor, to C D, of ...., by occupation a ...., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of .... dollars, on (or before) the .... day of ...., in the year ...., with interest thereon (or as security for the payment of a note or obligation, describing it, etc.) A B.

§ 1743. TWO METHODS OF FORECLOSURE.] A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on pledge, or by proceedings under the code of civil procedure.

§ 1744. VOID UNLESS FILED—HOW.] A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value, unless the original, or an authenticated copy thereof, be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated.

§ 1745. NOTICE OF FILING.] The filing of a mortgage of personal property, in conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section situated in the county or counties wherein such mortgage or authenticated copy thereof, is filed.

§ 1746. PROPERTY IN TRANSIT—OF CARRIER.] 1. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

2. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

§ 1747. VALID ONLY WHERE DULY FILED.] A single mortgage of personal property, embracing several things of such character or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in whose office it is filed, and such copy be filed in any other county with the same effect as to the property therein that the original could have been.

§ 1748. FILING VALID THREE YEARS—RENEWAL.] A mortgage of personal property ceases to be valid, as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith, after the expiration of three years from the filing thereof, unless, within thirty days next preceding the expiration of such term, a copy of the mortgage, and a statement of the amount of existing debt for which the mortgagee claims a lien, sworn to and subscribed by him, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides. And in like manner the mortgage and statement of debt must be again filed every three years, or it ceases to be valid, as against the parties above mentioned.

§ 1749. EXECUTION—TWO WITNESSES.] A mortgage of personal property must be signed by the mortgagor in the presence of two persons who must sign the same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed.

§ 1750 HOW FILED—CAREFUL CUSTODY—CANCELLATION.] The register of deeds of each of the several counties must receive and file all such instruments as are offered to him, and must keep the same in his office in regular and orderly file, for the public information, and must not permit them or any of them to be removed from his office until canceled. Every such mortgage may be canceled by the register of deeds upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof signed by the mortgagee.

§ 1751. REGISTRY INDEX—ENTRIES.] Every register of deeds with whom any such mortgage or authenticated copy thereof is filed, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for that purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate columns, opposite each name, the number indorsed upon the mortgage, the date thereof, and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered, and the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed, which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee.

§ 1752. WHEN MORTGAGOR MAY TAKE PROPERTY.] If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

§ 1753. MAY BE ATTACHED.] Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor.

§ 1754. MORTGAGEE'S RIGHTS.] Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee.

§ 1755. PROCEEDS HOW APPLIED.] When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execction are applied in other cases.

§ 1756. SHIP MORTGAGES.] No mortgage of any ship or vessel, or part thereof, of the United States, shall be valid against any person, (other than the mortgagor, his heirs and devisees, and persons having actual notice thereof), unless such mortgage is recorded in the office of the collector of the customs where such vessel is registered or enrolled. [Sec. 4192 R. S. of U. S.]

2. Sections 1744 to 1755 inclusive, of this article, do not therefore apply to any mortgage of a ship or vessel (or any part thereof) which is required as above, by act of congress, to be recorded in a particular place or manner.

CHAPTER III.

PLEDGE.

§ 1757. DEFINITION.] Pledge is a deposit of personal property by way of security for the performance of another act.

§ 1758. CONSTRUCTION.] Every contract by which the possession of personal property is transferred, as a security only, is to be deemed a pledge.

§ 1759. POSSESSION NECESSARY.] The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledgeholder, as hereafter prescribed.

§ 1760. INCREASE.] The increase of property pledged is pledged with the property.

§ 1761. LIEN UPON LIEN.] One who has a lien upon property may pledge it to the extent of his lien.

§ 1762. PLEDGE BY APPARENT OWNER.] One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

§ 1763. FOR OTHER PERSON.] Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

§ 1764. PLEDGEHOLDER.] A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged; who, if he accepts the deposit, is called a pledgeholder.

§ 1765. CANNOT WITHDRAW.] One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

§ 1766. EXONERATION OF HOLDER.] A pledgeholder for reward cannot exonerate himself from his undertaking; and a gratuitous pledgeholder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledgeholder, and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

§ 1767. DUTIES.] A pledgeholder must enforce all the rights of the pledgee, unless authorized by him to waive them.

§ 1768. DEPOSITARY.] A pledgee, or a pledgeholder for reward, assumes the duties and liabilities of a depositary for reward.

§ 1769. SAME.] A gratuitous pledgeholder assumes the duties and liabilities of a gratuitous depositary.

§ 1770. MISREPRESENTATION.] Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

§ 1771. SALE—WHEN.] When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

§ 1772. DEMAND REQUIRED.] Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

§ 1773. NOTICE TO PLEDGOR.] A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale, as will enable the pledgor to attend.

§ 1774. WAIVER.] Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

§ 1775. HOW DONE.] A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due, but cannot waive it in any other manner except by contract.

§ 1776. AUCTION.] The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

§ 1777. SECURITIES.] A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states or corporations; but he may collect the same when due.

§ 1778. SALE REQUIRED.] Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

§ 1779. ACCOUNT.] After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

§ 1780. SAME.] When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

§ 1781. CANNOT PURCHASE.] A pledgee or pledgeholder cannot purchase the property pledged except by direct dealing with the pledgor.

§ 1782. FORECLOSURE.] Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

BOTTOMRY.

§ 1783. DEFINITION.] Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage or period.

§ 1784. OWNER MAY.] The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

§ 1785. MASTER MAY.] The master of a ship may hypothecate it upon bottomry, only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

§ 1786. SAME—LIMITED.] The master of a ship can hypothecate it upon bottomry, only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

§ 1787. SAME—FREIGHTAGE.] The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

§ 1788. INTEREST.] Upon a contract of bottomry. the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant

§ 1789. FORECLOSURE.] A lender upon a contract of bottomry, made by the master of a ship as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

§ 1790. VOID.] A stipulation, in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

§ 1791. NO RECOVERY.] In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

§ 1792. WHEN LOAN DUE.] Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

§ 1793. LOST BY OMISSION.] A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

§ 1794. PREFERENCE OVER OTHER LIEN.] A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs, indispensable to the safety of the ship, and a subsequent lien for salvage.

§ 1795. AMONG EACH OTHER.] Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

§ 1796. DEFINITION.] Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maratime risk.

§ 1797. BY OWNER.] The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

§ 1798. BY MASTER.] The master of a ship may hypothecate its cargo upon respondentia, only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies, which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

§ 1799. REFERENCE.] The provisions of sections 1788 to 1795 apply equally to loans on respondentia.

§ 1800. CARGO OWNER.] The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien.

CHAPTER VI.

OTHER LIENS.

§ 1801. FOR PRICE OF REALTY.] One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid, and unsecured otherwise than by the personal obligation of the buyer.

§ 1802. WAIVER OF SAME] Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

§ 1803. CERTAIN LIENS VALID.] The liens defined in sections 1801 and 1805 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

§ 1804. SAME AS PLEDGE.] One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.

§ 1805. PURCHASER'S LIEN.] One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

§ 1806. FOR SERVICES.] Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.

§ 1807. OF FACTOR.] A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

§ 1808. BANKER.] A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

§ 1809. SHIP MASTER.] The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

§ 1810. SEAMEN.] The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage for their wages, which is superior to every other lien.

§ 1811. BY LEVY.] An officer, who levies an attachment or execution upon personal property, acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

§ 1812. VARIOUS LIENS.] Innkeepers, boarding-house keepers, attorneys-at-law, and others, have liens which are defined and regulated by and in the various codes.

§ 1813. JUDGMENT.] The lien of a judgment is regulated by the code of civil procedure.

§ 1814. MECHANICS.] 1. The liens of mechanics, for materials and services upon real property, are regulated by the code of civil procedure.

2. A person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper pub-

lished in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien, and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

CHAPTER VII.

STOPPAGE IN TRANSIT.

§ 1815. WHEN OPERATIVE.] A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

§ 1816. INSOLVENCY DEFINED.] A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

§ 1817. TRANSIT ENDS.] The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

§ 1818. HOW EFFECTED.] Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

§ 1819. EFFECT OF.] Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I. Negotiable Instruments in General.
II. Bills of Exchange.
III. Promissory Notes.
IV. Cheques.
V. Bank Notes and Certificates of Deposit.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I. General Definitions.
II. Interpretation.
III. Indorsement.
IV. Presentment for Payment.
V. Dishonor.
VI. Excuse of Presentment and Notice.
VII. Extinction.

ARTICLE I.—GENERAL DEFINITIONS.

§ 1820. SCOPE OF TITLE.] The provisions of this title apply only to negotiable instruments, as defined in this article.

§ 1821. DEFINITION.] A negotiable instrument is a written promise or request for the payment of a certain sum of money, to order or bearer, in conformity to the provisions of this article.

§ 1822. PAYABLE IN MONEY—CERTAIN.] A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

§ 1823. PAYEE CERTAIN.] The person to whose order a negotiable instrument is made payable, must be ascertainable at the time the instrument is made.

§ 1824. NOT INCLUDED.] A negotiable instrument may give to the payee an option between the payment of the sum specified therein, and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

§ 1825. DATE, PLACE AND TIME.] A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

§ 1826. COLLATERAL.] A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

§ 1827. SINGLE CONTRACT.] A negotiable instrument must not contain any other contract than such as is specified in this article.

§ 1828. NOMINAL DATE.] Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

§ 1829. CLASSIFIED.] There are six classes of negotiable instruments, namely:

1. Bills of exchange.
2. Promissory notes.
3. Bank notes.
4. Cheques.
5. Bonds.
6. Certificates of deposit.

ARTICLE II.—INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

§ 1830. WHEN PAYABLE.] A negotiable instrument which does not specify the time of payment, is payable immediately.

§ 1831. WHERE.] A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found.

§ 1832. TO WHOM.] An instrument, otherwise negotiable in form, payable to a person named, but adding the words, "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and the latter case, payable to the bearer.

§ 1833. SAME AS TO BEARER.] A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts, as if payable to the bearer.

§ 1834. SAME] A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

§ 1835. CONSIDERATION PRESUMED.] The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

ARTICLE III.—INDORSEMENT.

§ 1836. DEFINITION.] One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon to another person, is called an indorser, and his act is called indorsement.

§ 1837. AGREEMENT TO INDORSE.] One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

§ 1838. ON ANNEXED PAPER.] When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

§ 1839. CLASSIFID.] An indorsement may be general or special.

§ 1840. GENERAL.] A general indorsement is one by which no indorsee is named.

§ 1841. SPECIAL] A special indorsement specifies the indorsee.

§ 1842. CHANGED TO SPECIAL.] A negotiable instrument bearing a general indorsement, cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one by writing above it a direction for payment to a particular person.

§ 1843. NOT NEGOTIABLE.] A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

§ 1844. WARRANTIES IMPLIED.] Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.
2. That he has a good title to it.
3. That the signatures of all prior parties are binding upon them.
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same in full, with interest; unless exonerated under the provisions of sections 1894, 1932 or 1934.

§ 1845. LIABILITY.] One man who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

§ 1846. QUALIFIED INDORSEMENT.] An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement he is responsible only to the same extent as in the case of a transfer without indorsement.

§ 1847. SAME] Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

§ 1848. PRIOR INDORSERS.] An indorsee of negotiable instrument has the same rights against every prior party thereto, that he would have had if the contract had been made directly between them in the first instance.

§ 1849. RIGHTS OF GUARANTOR.] An indorser has all the rights of a guarantor, as defined by the chapter on guaranty in general, and is exonerated from liability in like manner.

§ 1850. ACCOMMODATION.] One who indorses a negotiable instrument, at the request, and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by the chapter on suretyship, and is exonerated in like manner, in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

§ 1851. NOT EXONERATED.] The want of consideration for the undertaking of a maker, acceptor, or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

§ 1852. DEFINITION.] An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

§ 1853. ABSOLUTE TITLE.] An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

§ 1854. BLANK INDORSEMENT.] One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled,so long as it remains negotiable in form.

ARTICLE IV.—PRESENTMENT FOR PAYMENT.

§ 1855. DEMAND.] It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

§ 1856. HOW PRESENTED.] Presentment of a negotiable instrument for payment when necessary must be made as follows, as nearly as by reasonable diligence it is practicable:

One—The instrument must be presented by the holder.

Two—The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there.

Three—An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.

Four—An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor; and,

Five—The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

Six—If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

§ 1857. APPARENT MATURITY.] The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or, when that is a holiday, the next business day.

§ 1858. PRESUMED DISHONOR.] A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

§ 1859. MATURITY DEFINED.] The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

§ 1860. SAME OF NOTE.] The apparent maturity of a promissory note, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, six months after its date.

§ 1861. ADDED TIME.] Where a promissory note is not payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

§ 1862. CONDITIONS REQUIRED.] A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

One—That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or, Two—If the holder has a right to retain the instrument, and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

Three—If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.—DISHONOR OF NEGOTIABLE INSTRUMENTS.

§ 1863. DISHONOR DEFINED.] A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

§ 1864. NOTICE HOW GIVEN.] Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,
2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

§ 1865. FORM OF NOTICE.] A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

§ 1866. HOW SERVED.] A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,
2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,
3. By properly folding the notice, directing it to the party to be charged at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

§ 1867. SERVICE AFTER DEATH.] In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

§ 1868. SAME VALID.] A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

§ 1869. IF NOT BY MAIL, WHEN.] Notice of dishonor, when given by the holder of an instrument, or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

§ 1870. NOTICE BY MAIL.] When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

§ 1871. BY AGENT.] When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

§ 1872. NOTICE TO PRIOR PARTIES.] Every party to a negotiable instrument receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties, as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

§ 1873. BENEFITS ALL PARTIES.] A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

ARTICLE VI.—EXCUSE OF PRESENTMENT AND NOTICE.

§ 1874. EXCUSES CLASSIFIED.] Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

§ 1875. PRESENTMENT EXCUSED.] Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

§ 1876. SECURITY EXCUSES.] If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

§ 1877. DELAY EXCUSED.] Delay in presentment, or in giving notice of dishonor, is excused, when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

§ 1878. EXTENT OF WAIVER.] A waiver of presentment waives notice of dishonor, also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

§ 1879. WAIVER OF PROTEST.] A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

ARTICLE VII.—EXTINCTION OF NEGOTIABLE INSTRUMENTS.

§ 1880. WHAT DOES.] The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and appearing, by its terms, to be entitled to payment.

§ 1881. REVIVOR.] If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I. Form and Interpretation.
II. Days of Grace.
III. Presentment for Acceptance.
IV. Acceptance.
V. Acceptance or Payment for Honor.
VI. Presentment for Payment.
VII. Excuse of Presentment and Notice.
VIII. Foreign Bills.

ARTICLE I.—FORM AND INTERPRETATION OF A BILL.

§ 1882. FORM OF BILL.] A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

§ 1883. ADDITIONAL DRAWEE.] A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

§ 1884. PARTS OF A SET.] A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

§ 1885. IN THREE PARTS.] An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

§ 1886. ONE PART FOR WHOLE.] Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

§ 1887. PLACE OF PAYMENT.] A bill of exchange is payable:

One—At the place where, by its terms, it is made payable; or,

Two—If it specify no place of payment, then at the place to which it is addressed; or,

Three—If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

§ 1888. DRAWER.] The rights and obligations of the drawer of a bill of exchange, are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.—DAYS OF GRACE.

§ 1889. WHAT INSTRUMENTS HAVE GRACE.] Days of grace are allowed, unless there be an express stipulation to the contrary, as follows:

One—On all bills of exchange, or drafts, payable at sight, whether foreign or inland, the party or parties upon whom the same are drawn shall have three days of grace after presentation for payment of the same; but Sundays and holidays are excluded from the computation of the aforesaid days of grace.

Two—The like days of grace, to be computed as above, shall be allowed for the payment of all promissory notes, bills of exchange, and drafts, on the face of which time is given or specified; and,

Three—Notes due on demand shall also be subject to the like days of grace, in manner as aforesaid, after demand is made for the payment of the same.

ARTICLE III.—PRESENTMENT FOR ACCEPTANCE.

§ 1890. BEFORE PAYMENT.] At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance, and if acceptance is refused the bill is dishonored.

§ 1891. MANNER OF PRESENTMENT.] Presentments for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

One—The bill must be presented by the holder or his agent.

Two—It must be presented on a business day, and within reasonable hours.

Three—It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,

Four—The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

§ 1892. JOINT DRAWEES.] Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

§ 1893. DRAWEE IN NEED.] A bill of exchange, which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

§ 1894. WHEN MADE.] When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated, if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.—ACCEPTANCE.

§ 1895. HOW MADE] An acceptance of a bill must be made in writing, by the drawee, or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill, with or without other words.

§ 1896. HOLDER ENTITLED TO.] The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored, if the drawee refuses to write across its face an unqualified acceptance.

§ 1897. WHAT DEEMED SUFFICIENT.] The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper.

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town, in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately, without regard to its terms.

§ 1898. UPON SEPARATE PAPER.] The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

§ 1899. PROMISE TO ACCEPT.] An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration.

§ 1900. CANCELLATION OF.] The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

§ 1901. ADMISSIONS BY.] The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

ARTICLE V.—ACCEPTANCE OR PAYMENT FOR HONOR.

§ 1902. WHEN MAY BE DONE.] On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

§ 1903. WHAT HOLDER MUST ACCEPT.] The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

§ 1904. FOR HONOR, HOW MADE.] An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

§ 1905. HOW ENFORCED.] A bill of exchange which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill.

§ 1906. NOTICE BY HOLDER REQUIRED.] The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.—PRESENTMENT FOR PAYMENT.

§ 1907. PLACE.] If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

§ 1908. PRESENTED WHEN ACCEPTED.] A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere.

§ 1909. REASONABLE DILIGENCE.] If a bill of exchange, payable at sight, or on demand, without interest, is not duly presented for payment, within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

§ 1910. NO EXONERATION.] Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.—EXCUSE OF PRESENTMENT AND NOTICE.

§ 1911. LACK OF CAPACITY TO ACCEPT.] The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

§ 1912. BEYOND CONTROL.] Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

§ 1913. WHEN FORBIDDEN.] Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VII.—FOREIGN BILLS.

§ 1914. DEFINITION.] An inland bill of exchange is one drawn and payable within this territory. All others are foreign.

§ 1915. PROTEST NECESSARY.] Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

§ 1916. BY WHOM PROTESTED.] Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses.

§ 1917. FORM OF PROTEST.] Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept, or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged.

§ 1918. PLACE OF PROTEST.] A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance; and a protest for non-payment in the city or town in which it is presented for payment.

§ 1919. WHEN NOTED.] A protest must be noted on the day of the presentment, or on the next business day; but it may be written out at any time thereafter.

§ 1920. PROTEST EXCUSED.] The want of protest of a foreign bill of exchange or delay in making the same, is excused in like cases with the want or delay of presentment.

§ 1921. NOTICE HOW GIVEN.] Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

§ 1922. PROTEST WAIVED BY BILL.] If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

§ 1923. DECLARATION FOR HONOR.] One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

§ 1924. DAMAGES INCLUDE.] Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages in favor of holders for value only, upon bills of exchange drawn or negotiated within this territory, and protested for non-acceptance or non-payment.

§ 1925. RATES OF DAMAGES.] Damages are allowed under the last section upon bills drawn upon any person:

One—If drawn upon any person in this territory, two dollars upon each one hundred dollars of the principal sum specified in the bill.

Two—If drawn upon any person out of this territory, but in the states of Nebraska, Iowa, Minnesota, Wisconsin, Illinois and Missouri, or in the territory of Montana, three dollars upon each hundred dollars of the principal sum specified in the bill.

Three—If drawn upon any person in any of the United States or territories other than those above named, five dollars upon each hundred dollars of the principal sum specified in the bill.

Four—If drawn upon any person in any place in a foreign country, ten dollars upon each hundred dollars of the principal sum specified in the bill.

And from the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned as above.

§ 1926. IN UNITED STATES MONEY.] If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

§ 1927. IN FOREIGN MONEY.] If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

§ 1928. DEFINITION.] A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

§ 1929. CERTAIN BILL A NOTE.] An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

§ 1930. CONVERTED INTO NOTE.] A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

§ 1931. LAWS APPLICABLE.] Chapter I of this title, and sections 1889 and 1910, of this code, apply to promissory notes.

§ 1932. DELAY EXONERATES.] If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated unless such presentment is excused.

CHAPTER IV.

CHEQUES.

§ 1933. DEFINITION.] A cheque is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

§ 1934. LIKE BILL, EXCEPT.] A cheque is subject to all the provisions of this code concerning bills of exchange, except that:

One—The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby.

Two—An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

Three—No days of grace are allowed on cheques.

CHAPTER V.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

§ 1935. CONTINUING NEGOTIABILITY.] A bank note remains negotiable, even after it has been paid by the maker.

§ 1936. KNOWN DISHONOR.] A transferree of a bond, bank note or certificate of deposit, after its apparent maturity or actual dishonor within his knowledge, acquires a title equal to that of a transferree before such event.

TITLE XVI.

GENERAL PROVISIONS.

§ 1937. THE CONTRACT MAY WAIVE THESE TITLES.] Except where it is otherwise declared the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

DIVISION FOURTH.

GENERAL PROVISIONS.

APPLICABLE TO PERSONS, PROPERTY AND OBLIGATIONS, OR TO TWO OF THOSE SUBJECTS.

PART I. Relief.
II. Special Relations of Debtor and Creditor.
III. Nuisance.
IV. Maxims of Jurisprudence.
V. Definitions and General Provisions.

PART 1.

RELIEF.

TITLE I. Relief in General.
II. Compensatory Relief.
III. Specific Relief.
IV. Preventive Relief.

TITLE I.

RELIEF IN GENERAL.

§ 1938. SPECIES OF RELIEF.] As a general rule, compensation is the relief or remedy provided by the law of this territory for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the civil code.

§ 1939. RELIEF FROM FORFEITURE.] Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeit-are, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. Damages in General.
II. Measure of Damages.

CHAPTER I.

DAMAGES IN GENERAL.

ARTICLE I. General Principles.
II. Interest as Damages.
III. Exemplary Damages.

ARTICLE I.—GENERAL PRINCIPLES.

§ 1940. DAMAGES FOR ANY INJURY.] Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

§ 1941. DEFINITION.] Detriment is a loss or harm suffered in person or property.

§ 1942. FUTURE DETRIMENT.] Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.—INTEREST AS DAMAGES.

§ 1943. INTEREST UPON DAMAGES.] Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

§ 1944. JURY MAY ALLOW.] In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud or malice, interest may be given, in the discretion of the jury.

§ 1945. WAIVER OF INTEREST.] Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.—EXEMPLARY DAMAGES.

§ 1946. WHEN JURY MAY GIVE.] In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I. Damages for Breach of Contract.
II. Damages for Wrongs.
III. Penal Damages.
IV. General Provisions.

ARTICLE I.—DAMAGES FOR BREACH OF CONTRACT.

§ 1947. PROXIMATE RESULTS.] For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

§ 1948. MUST BE CERTAIN.] No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

§ 1949. PRINCIPAL AND INTEREST.] The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

§ 1950. FOREIGN BILLS.] For the dishonor of foreign bills of exchange, the damages are prescribed by sections 1925, 1926 and 1927 of this code.

§ 1951. COVENANTS IN GRANTS.] The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach, bore, at the time of the grant, to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expenses properly incurred by the covenantee in defending his possession.

§ 1952. INCUMBRANCES.] The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.

§ 1953. AGREEMENT TO CONVEY.] The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

§ 1954. SAME. OF BUY.] The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

§ 1955. DELIVERY OF PERSONALITY.] The detriment caused by the breach of a seller's agreement to delivery personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

§ 1956. SAME.] The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion.

§ 1957. AGREEMENT TO ACCEPT AND PAY.] The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

§ 1958. TO BUY PERSONALTY.] The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him is deemed to be:

1. If the property has been resold, pursuant to section 1804, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 1804, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

§ 1959. BREACH OF WARRANTY TO TITLE.] The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay, in an action brought for the property by the true owner.

§ 1960. AS TO QUALITY.] The detriment caused by the breach of a warranty of the quality of personal property, is deemed to be the excess, if any, of the value which the property would have had, at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

§ 1961. FITNESS.] The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

§ 1962. BY CARRIER TO ACCEPT] The detriment caused by the breach of a carrier's obligation to accept freight, messages or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service, when it ought to be performed.

§ 1963. TO DELIVER.] The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof, at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled, if he had completed the delivery.

§ 1964. DELAY BY CARRIER.] The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

§ 1965. BY AGENT OF AUTHORITY.] The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

§ 1966. OF MARRIAGE.] The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

CHAPTER II.

DAMAGES FOR WRONGS.

§ 1967. PROXIMATE DETRIMENT.] For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

§ 1968. WRONGFUL OCCUPATION.] The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 1969, 1975, 1976 and 1977, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

§ 1969. DETAINER BY TRUSTEE.] For willfully holding over real property by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

§ 1970. CONVERSION OF PERSONALTY.] The detriment caused by the wrongful conversion of personal property is presumed to be:

One—The value of the property at the time of the conversion, with the interest from that time; and,

Two—A fair compensation for the time and money properly expended in pursuit of the property.

§ 1971. SAME—PRESUMPTION.] The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

§ 1972. DAMAGES TO LIENOR.] One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 1970 for loss of time and expenses.

§ 1973. FOR SEDUCTION.] The damages for seduction rest in the sound discretion of the jury.

§ 1974. EXEMPLARY DAMAGES.] For wrongful injuries to animals, being subjects of property, committed willfully, or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.—PENAL DAMAGES.

§ 1975. DOUBLE RENT.] For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

§ 1976. FOR WILLFUL HOLDING OVER.] For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

§ 1977. FOR FORCIBLE EXCLUSION.] For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

§ 1978. INJURIES TO TIMBER.] For wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

ARTICLE IV.—GENERAL PROVISIONS.

§ 1979. RULE OF VALUE TO SELLER.] In estimating damages, the value of property, to a seller thereof, is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

§ 1980. VALUE OF EQUIVALENT.] In estimating damages, except as provided by sections 1981 and 1982, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

§ 1981. PECULIAR VALUE.] Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

§ 1982. TITLE PAPERS.] For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

§ 1983. EXPLANATION.] The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

§ 1984. LIMITATION.] Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in section 1966, 1973 and 1974.

§ 1985. DAMAGES MUST BE REASONABLE.] Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

§ 1986. NOMINAL DAMAGES.] When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I. General Principles.
II. Specific Relief.
III. Preventive Relief.

CHAPTER I.

GENERAL PRINCIPLES.

§ 1987. CERTAIN RELIEF—WHEN.] Specific or preventive relief may be given in the cases specified in this title, and in no others.

§ 1988. METHODS OF GIVING SPECIFIC RELIEF.] Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant.
2. By compelling a party himself to do that which ought to be done; or,
3. By declaring and determining the rights of parties, otherwise than by an award of damages.

§ 1989. SAME—PREVENTIVE.] Preventive relief is given by prohibiting a party from doing that which ought not to be done.

§ 1990. LIMITATION.] Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

CHAPTER II.

SPECIAL RELIEF.

ARTICLE I. Possession of Real Property.
II. Possession of Personal Property.
III. Specific Performance of Obligations.
IV. Revision of Contracts.
V. Rescission of Contracts.
VI. Cancellation of Instruments.

ARTICLE I.—POSSESSION OF REAL PROPERTY.

§ 1991. HOW ENFORCED.] A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

ARTICLE II.—POSSESSION OF PERSONAL PROPERTY.

§ 1992. JUDGMENT OF RECOVERY.] A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the code of civil procedure.

§ 1993. SPECIFIC DELIVERY.] Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

ARTICLE III.—SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 1994. MAY BE COMPELLED.] Except as otherwise provided in this article, the specific performance of an obligation may be compelled.

§ 1995. REMEDY MUTUAL.] Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

§ 1996. DIFFERENT PRESUMPTIONS.] It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

§ 1997. WHEN ONLY ONE SIGNED.] A party, who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

§ 1998. PERFORMANCE INSTEAD OF DAMAGES.] A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

§ 1999. NOT ENFORCEABLE.] The following obligations cannot be specifically enforced:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

§ 2000. NOT AGAINST PARTY.[Specific performance cannot be enforced against a party to a contract, in any of the following cases:

1. If he has not received an adequate consideration for the contract.
2. If it is not, as to him, just and reasonable.
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

§ 2001. NOT IN FAVOR OF PARTY.] Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

§ 2002. NOT IF TITLE FAILS] An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

§ 2003. AGAINST SUBSEQUENT HOLDER.] Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.—REVISION OF CONTRACTS.

§ 2004. FOR MISTAKE OR FRAUD.] When through fraud, or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith, and for value.

§ 2005. INTENTION PRESUMED.] For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

§ 2006. SUBSTANCE NOT LANGUAGE.] In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

§ 2007. ORDER OF ACTIONS.] A contract may be first revised and then specifically enforced.

ARTICLE V.—RESCISSION OF CONTRACTS.

§ 2008. WHEN RESCISSION ADJUDGED.] The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in section 965; or,

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

3. When the public interest will be prejudiced by permitting it to stand.

§ 2009. NOT FOR MERE MISTAKE.] Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

§ 2010. COMPENSATION.] On adjudging the rescission of a contract the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.—CANCELLATION OF INSTRUMENTS.

§ 2011. WHEN TO BE ADJUDGED.] A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may upon his application, be so adjudged and ordered to be delivered up or cancelled.

§ 2012. CONSTRUCTION.] An instrument, the validity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

§ 2013. PART CANCELLATION.] Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

§ 2014. BY INJUNCTION.] Preventive relief is granted by injunction, provisional or final.

§ 2015. HOW REGULATED.] Provisional injunctions are regulated by the code of civil procedure.

§ 2016. WHEN INJUNCTION ALLOWED.] Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief.

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust.

§ 2017. WHEN NOT GRANTED.] An injunction cannot be granted:

One—To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

Two—To stay proceedings in a court of the United States.

Three—To stay proceedings in a state upon a judgment of a court of that state.

Four—To prevent the execution of a public statute, by officers of the law, for the public benefit.

Five—To prevent the breach of a contract, the performance of which would not be specifically enforced.

Six—To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Seven—To prevent a legislative act by a municipal corporation.

PART 2.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. General Principles.
II. Fraudulent Instruments and Transfers.
III. Assignments for the Benefit of Creditors.

TITLE I.

GENERAL PRINCIPLES.

§ 2018. DEBTOR DEFINED.] A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

§ 2019. CREDITOR.] A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

§ 2020. FRAUD ONLY INVALIDATES.] In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

§ 2021. PREFERRED CREDITORS.] A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand, in preference to another.

§ 2022. ALTERNATIVE RIGHT TO FUNDS.] Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

§ 2023. WITH INTENT TO DEFRAUD.] Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any persons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

§ 2024. CONCLUSIVE PRESUMPTION.] Every transfer of personal property other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

§ 2025. FRAUD, HOW AVOIDED.] A creditor can avoid the act or obligation of his debtor, for fraud, only where the fraud obstructs the inforcement, by legal process, of his right to take the property affected by the transfer or obligation.

§ 2026. QUESTION OF FACT, NOT LAW.] In all cases arising under section 676, or under the provisions of this title, except as otherwise provided in section 2024, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

§ 2027. WHEN ALLOWABLE.] An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust towards the satisfaction of his creditors, in conformity to the provisions of this title; subject, however, to the provisions of this code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes of persons: *Provided, moreover*, That such assignment shall not be valid if it be upon, or contain any trust or condition by which any creditor is to receive a preference or priority over any other creditor; but in such case the property of the insolvent shall become a trust fund to be administered in equity, in the district court, and shall inure to the benefit of all the creditors in proportion to their respective claims or demands.

§ 2028. INSOLVENCY DEFINED.] A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means, as they become due.

§ 2029. WHAT MAY PROVIDE.] An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

§ 2030. VOID IN CERTAIN CASES.] An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

One—If it tend to coerce any creditor to release or compromise his demand.

Two—If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor.

Three—If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid, other than property exempt by law from execution.

Four—If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

Five—If it exempt him from liability for neglect of duty or misconduct.

§ 2031. HOW EXECUTED.] An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and recorded as required by sections 2036 and 2037.

§ 2032. VOID UNLESS SO MADE.] Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

§ 2033. RIGHTS OF ASSIGNEE.] An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

§ 2034. INVENTORY REQUIRED.] Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file in the manner prescribed by section 1938, a full and true inventory, showing:

1. All the creditors of the assignor.

2. The place of residence of each creditor if known to the assignor, or if not known, that fact must be stated.

3. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise.

4. The true consideration of the liability in each case, and the place where it arose.

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor.

6. All property of the assignor at the date of the assignment which is exempt by law from execution; and,

7. All the assignor's property at the date of the assignment, both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

§ 2035. VERIFICATION OF SAME.] An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

§ 2036. RECORD AND FILING.] An assignment for the benefit of creditors must be recorded, and the inventory required by section 2034 filed with the register of deeds of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this territory, with the like officer of the county in which his principal place of business was then situated; or if he had not then a residence or place of business in this territory, with the like officer of the county in which the principal part of the assigned property was then situated.

§ 2037. SAME.] If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by section 2034 must be filed with the register of deeds of every county in which any of the assignors resided at its date, or in which any of them, not then residing in this territory, had then a place of business.

§ 2038. RECORD WITHIN TWENTY DAYS.] An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value if the assignment is not recorded, and the inventory required by section 2034 filed, pursuant to section 2036, within twenty days after the date of the assignment.

§ 2039. REAL PROPERTY.] Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article IV of the chapter on recording transfers, as well as to those of this title.

§ 2040. BOND OF ASSIGNEE.] Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to this territory in double the amount of the value of the property assigned, with sufficient sureties, to be approved by the judge of the district court of the county in which the original inventory is filed, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

§ 2041. WHEN AUTHORITY BEGINS.] Until the inventory and affidavit required by sections 2034 and 2035 have been made, and the assignment has been duly recorded, and the inventory filed, and the assignee has given a bond as required by the last section, an assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

§ 2042. WHEN ASSIGNEE TO ACCOUNT.] After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on complaint of any creditor, to account before the district court of the county where the accompanying inventory was filed, in the manner prescribed by the code of civil procedure.

§ 2043. PROPERTY EXEMPT.] Property exempt from execution, and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

§ 2044. COMPENSATION.] In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

§ 2045. GOOD FAITH PROTECTS ASSIGNEE.] An assignee for the benefit of creditors is not to be held liable for his acts done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

§ 2046. CANNOT BE CANCELED.] An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART 3.

NUISANCE.

TITLE I. General Principles.
II. Public Nuisances.
III. Private Nuisances.

TITLE I.

GENERAL PRINCIPLES.

§ 2047. NUISANCES DEFINED.] A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others; or,
2. Offends decency; or,
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,
4. In any way renders other persons insecure in life, or in the use of property.

§ 2048. PUBLIC NUISANCE.] A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

§ 2049. PRIVATE.] Every nuisance not included in the definition of the last section, is private.

§ 2050. STATUTE AUTHORITY.] Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

§ 2051. SUCCESSIVE OWNERS.] Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

§ 2052. DAMAGES.] The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

§ 2053. TIME DOES NOT LEGALIZE.] No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

§ 2054. REMEDIES.] The remedies against a public nuisance are:

1. Indictment.
2. A civil action; or,
3. Abatement.

§ 2055. BY INDICTMENT.] The remedy by indictment is regulated by the penal code and the code of criminal procedure.

§ 2056. BY ACTION.] A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

§ 2057. HOW ABATED.] A public nuisance may be abated by any public body or officer authorized thereto by law.

§ 2058. SAME.] Any person may abate a public nuisance which is specially injurious to him, by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

§ 2059. REMEDIES AGAINST.] The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

§ 2060. HOW PERSON MAY ABATE.] A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

§ 2061. WHEN NOTICE OF REQUIRED.] Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART 4.

MAXIMS OF JURISPRUDENCE.

§ 2062. HOW TO BE USED AND APPLIED.] The maxims of jurisprudence hereinafter set forth, are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

§ 2063. When the reason of a rule ceases, so should the rule itself.

§ 2064. Where the reason is the same, the rule should be the same.

§ 2065. One must not change his purpose to the injury of another.

§ 2066. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

§ 2067. One must so use his own rights as not to infringe upon the rights of another.

§ 2068. He who consents to an act is not wronged by it.

§ 2069. Acquiescence in error takes away the right of objecting to it.

§ 2070. No one can take advantage of his own wrong.

§ 2071. He who has fraudulently dispossessed himself of a thing, may be treated as if he still had possession.

§ 2072. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

§ 2073. No one should suffer by the act of another.

§ 2074. He who takes the benefit must bear the burden.

§ 2075. One who grants a thing is presumed to grant also whatever is essential to its use.

§ 2076. For every wrong there is a remedy.

§ 2077. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

§ 2078. Between rights otherwise equal, the earliest is preferred.

§ 2079. No man is responsible for that which no man can control.

§ 2080. The law helps the vigilant before those who sleep on their rights.

§ 2081. The law respects form less than substance.

§ 2082. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

§ 2083. That which does not appear to exist is to be regarded as if it did not exist.

§ 2084. The law never requires impossibilities.

§ 2085. The law neither does nor requires idle acts.

§ 2086. The law disregards trifles.

§ 2087. Particular expressions qualify those which are general.

§ 2088. Contemporaneous exposition is in general the best.

§ 2089. The greater contains the less.

§ 2090. Superfluity does not vitiate.

§ 2091. That is certain which can be made certain.

§ 2092. Time does not confirm a void act.

§ 2093. The incident follows the principal, not the principal the incident.

§ 2094. An interpretation which gives effect is preferred to one which makes void.

§ 2095. Interpretation must be reasonable.

§ 2096. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

PART 5.

DEFINITION AND GENERAL PROVISIONS.

§ 2097. MEANING OF WORDS.] Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained.

§ 2098. STATUTORY MEANING.] Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

§ 2099. DEGREES OF CARE.] There are three degrees of care and of diligence mentioned in this code, namely, slight, ordinary and great. The latter include the former.

§ 2100. DEGREES DEFINED.] Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance.

§ 2101. DEGREES OF NEGLIGENCE.] There are three degrees of negligence mentioned in this code, namely, slight, ordinary and gross. The latter include the former.

§ 2102. DEGREES DEFINED.] Slight negligence consists in the want of great care and diligence; ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence.

§ 2103. CHILDREN.] The term children includes children by birth and by adoption.

§ 2104. DEBTOR AND CREDITOR.] Except as defined and used in part 2 of this division, and in sections 2018 and 2019, every one who owes to another the performance of an obligation is called a debtor, and the one to whom he owes it, is called a creditor.

§ 2105. GOOD FAITH.] Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.

§ 2106. NOTICE CLASSED.] Notice is either actual or constructive.

§ 2107. ACTUAL.] Actual notice consists in express information of a fact.

§ 2108. CONSTRUCTIVE.] Constructive notice is notice imputed by the law to a person not having actual notice.

§ 2109. PRESUMPTION OF.] Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.

§ 2110. FALSE NOTICE.] A notice which is false when given, is not made valid by the subsequent happening of the event.

§ 2111. PAPER.] The word "paper," means any flexible material upon which it is usual to write.

§ 2112. PERSON INCLUDES CORPORATION.] The word "person," except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

§ 2113. SEVERAL.] The word "several," in relation to number, means two or more.

§ 2114. THIRD PERSONS.] The words "third persons," include all who are not parties to the obligation or transaction concerning which the phrase is used.

§ 2115. HOLIDAYS.] Holidays are, every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the territory, and every day appointed by the president of the United States, or by the governor of this territory, for a public fast, thanksgiving, or holiday.

§ 2116. ADDITIONAL DAY.] If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December, falls upon a Sunday, the Monday following is a holiday.

§ 2117. BUSINESS DAYS.] All other days than those mentioned in the last two sections, are to be deemed business days, for all purposes.

§ 2118. NEXT BUSINESS DAY.] Whenever any act of a secular nature, other than a work of necessity, or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

§ 2119. USAGE.] Usage, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

§ 2120. CUSTOMARY.] The words "usual," and "customary," mean "according to usage."

§ 2121. VALUE.] A valuable consideration, is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value."

§ 2122. VERDICT.] The word "verdict," includes not only the verdict of a jury, but also the finding upon the facts, of a judge, or of a referee appointed to determine the issues in a cause.

§ 2123. TIME.] The word "year," means a calendar year, and "month," a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day, and involve no questions of priority.

§ 2124. GENDER.] Words used in the masculine gender, include the feminine and neuter.

§ 2125. NUMBER.] Words used in the singular number include the plural, and the plural the singular, except where a contrary intention plainly appears.

§ 2126. OTHER DEFINITIONS.] Words used in the present tense include future as well as the present; the word "oath" includes "affirmation;" and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" "signature" or "subscription" includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes property, real and personal.

Two—The words "real property" are co-extensive with lands, tenements and hereditaments

Three—The words "personal property" include money, goods, chattels, things in action and evidences of debt.

Four—The word "will" includes codicils.

§ 2127. INTEREST.] The words "compound interest" mean interest added to the principal as the former becomes due, and thereafter made to bear interest.

§ 2128. WRITING AND PRINTING.] The words "writing" and "written," include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.

§ 2129. CODE EXCLUDES COMMON LAW.] The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. This code establishes the law of this territory respecting the subjects to which it relates; and its provisions are to be liberally construed with a view to effect its objects and to promote justice. Whenever this code is cited, enumerated, referred to, or amended, it may be designated simply as "The Civil Code," adding, when necessary, the number of the section.

§ 2130. IMPRESSION OF SEAL.] When the seal of a court, public officer, or person, is required by law to be affixed to any process, commission, paper, or instrument, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax, or a wafer affixed thereto.

§ 2131. MAJORITY POWER.] Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

§ 2132. REPEAL DOES NOT REVIVE.] Whenever any act of the legislative assembly is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided. [See section 12, R. S. of U. S.]

§ 2133. EFFECT OF REPEAL.] The repeal of any statute by the legislative assembly shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability. [See section 13, R. S. of U. S.]

Approved, February 16, 1877.

CODE OF CIVIL PROCEDURE.

AN ACT to Establish a Code of Civil Procedure for Dakota Territory.

GENERAL DEFINITIONS AND DIVISIONS.

§ 1. Title and parts of act.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* This act shall be known as the Code of Civil Procedure of the Territory of Dakota, and is divided into three parts, as follows:

Part 1. Of Courts of Justice.
Part 2. Of Civil Actions.
Part 3. Of Special Proceedings of a Civil Nature.

§ 2. Not retroactive.] No part of it is retroactive unless expressly so declared.

§ 3. Code excludes common law.] The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this territory respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to effect its objects and to promote justice.

§ 4. Prior rights.] No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

§ 5. Limitations continue.] When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code.

§ 6. Computation of time.] The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last is a holiday, and then it is also excluded.

§ 7. Construction of language.] Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined by statute, are to be construed according to such peculiar and appropriate meaning or definition.

§ 8. WORDS DEFINED.] The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "writ" signifies an order or precept in writing, issued in the name of the territory or of a court or judicial officer; and the word "process" a writ or summons issued in the course of judicial proceedings.

2. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories.

§ 9. EFFECT UPON FORMER LAWS.] No statute, law or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws and rules heretofore in force in this territory, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided; nor does it affect any private statute not expressly repealed.

§ 10. ACT HOW CITED.] This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the code of civil procedure, adding, when necessary, the number of the section.

§ 11. REMEDIES CLASSIFIED.] Remedies in the courts of justice are divided into:

1. Actions.
2. Special proceedings.

§ 12. ACTION DEFINED.] An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

§ 13. SPECIAL PROCEEDINGS.] Every other remedy is a special proceeding.

§ 14. ACTIONS CLASSIFIED.] Actions are of two kinds:

1. Civil.
2. Criminal.

§ 15. CRIMINAL DEFINED.] A criminal action is one prosecuted by the territory, as a party, against a person charged with a public offense, for the punishment thereof.

§ 16. CIVIL—PROCESS.] Every other is a civil action; and all process in civil actions shall run in the name of the territory of Dakota.

§ 17. NOT MERGED.] Where the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

PART 1.

COURTS OF JUSTICE AND THEIR JURISDICTION.

CHAPTER I.

OF THE COURTS IN GENERAL.

§ 18. COURTS.] The following are the courts of justice of this territory:

1. The supreme court.
2. The district courts.
3. The probate courts; and,
4. The courts of justices of the peace.

§ 19. JURISDICTION CONTINUED.] These courts shall continue to exercise the jurisdiction now vested in them respectively, except as otherwise prescribed by law.

CHAPTER II.

OF THE SUPREME COURT.

§ 20. JURISDICTION CLASSIFIED.] The jurisdiction of the supreme court is of two kinds:

1. Original; and,
2. Appellate.

§ 21. ORIGINAL.] Its original jurisdiction extends to all writs which by law may issue from this court, and to all writs necessary to the exercise of its appellate jurisdiction.

§ 22. EXCLUSIVE APPELLATE JURISDICTION.] It has exclusive jurisdiction to review upon appeal every actual determination hereafter made at any regular or special terms of the district courts of this territory, in the following cases, and no other:

1. In a judgment in an action commenced therein, or brought there from another court, and upon the appeal from such judgment, to review any intermediate order involving the merits, and necessarily affecting the judgment.

2. In an order affecting a substantial right, made in such action, when such order in effect determines the action, and prevents a judgment from which an appeal might be taken, or discontinues the action, or strikes out a pleading or any part of a pleading, or arises upon any interlocutory proceeding or any question of practice in the action and does not involve any

question of discretion, or grants or refuses a new trial, or sustains or overrules a demurrer, or grants, refuses, continues or modifies a provisional remedy; but no appeal to the supreme court from an order granting a new trial shall be effectual for any purpose, unless the notice of appeal contain an assent on the part of the appellant that, if the order be affirmed, judgment absolute shall be rendered against the appellant. Upon every appeal from an order granting a new trial, if the supreme court shall determine that no error was committed in granting the new trial, they shall render judgment absolute upon the right of the appellant; and after the proceedings are remitted to the court from which the appeal was taken, an assessment of damages or other proceedings to render the judgment effectual, may be there had, in cases where such subsequent proceedings are requisite.

3. In a final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, and upon such appeal to review any intermediate order involving the merits and necessarily affecting the order appealed from.

4. Whenever the decision of any motion heretofore made, or any motion hereafter to be made, in the district court of this territory at a special term thereof, involves the constitutionality of any law of this territory or has been or shall be placed, in the opinion or reason for such decision of the justice making such decision, upon the unconstitutionality of such law, then an appeal shall lie and may be made from such decision or from the order entered, or to be entered upon such decision, to the general term of said supreme court: *Provided, however*, That the time for appealing from such decision, or from such order, shall not be extended hereby.

§ 23. SCOPE OF JUDGMENT.] The supreme court may reverse, affirm, or modify, the judgment or order appealed from in whole or in part, and as to any or all of the parties; and its judgment shall be remitted to the court below to be enforced according to law; and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had.

§ 24. TERMS—CALENDAR.] The times and places for holding the terms of the supreme court shall be and remain as is now or may hereafter be provided by law. The court may provide what causes shall have a preference on the calendar, and regulate the practice and proceedings therein by general rules not inconsistent with the organic act and the statutes of this territory. On a second and each subsequent appeal to the supreme court, or when an appeal has once been dismissed for defect or irregularity, the cause shall be placed upon the calendar as of the time of filing the first appeal; and whenever in any action or proceeding in which the territory of Dakota or any territorial officer, or any board of territorial officers, is or are sole plaintiff or defendant, an appeal has been or shall be brought from any judgment or order for or against him or them, in any court, such appeal shall have a preference in the supreme court, and may be moved by either party out of the order on the calendar.

§ 25. TWO JUDGES MUST CONCUR.] The concurrence of two judges is necessary to pronounce a judgment. If two do not concur the cause must be reheard. But no more than two rehearings shall be had; and if on the second hearing two judges do not concur, the judgment shall be affirmed.

§ 26. ADJOURNMENT TO OTHER ROOMS.] The supreme court may be held in other buildings than those designated by law as places for holding courts, and at a different place in the same city from that at which it is appointed to be held. Any one or more of the justices may adjourn the court with the like effect as if all were present.

CHAPTER III.

OF THE DISTRICT COURT.

§ 27. CHANCERY AND COMMON LAW.] The district courts possess chancery as well as common law jurisdiction.

§ 28. EXCLUSIVE ORIGINAL JURISDICTION.] They have exclusive original jurisdiction in all actions or proceedings in chancery, and in all actions at law where the debt or sum claimed exceeds one hundred dollars, and in all cases in which the title to real property or the boundary thereof in any wise comes in question, except in actions for forcible entry or forcible and unlawful detainer; and in all actions for divorce and to obtain a decree of nullity of marriage; and in all such other cases as now are or may hereafter be provided by law.

§ 29. OF APPEALS.] They have jurisdiction of appeals from all final judgments of justices of the peace, and from all judgments, decrees or orders of the probate court, or other inferior officers or tribunals, in the cases prescribed by statute. They have also the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their judgments, decrees and orders, and to give them a general control over inferior courts, officers, boards, tribunals and jurisdictions.

§ 30. OTHER JURISDICTION.] They also possess all such criminal as well as civil jurisdiction as is conferred by the organic laws, and the statutes of this territory.

§ 31. ALWAYS OPEN FOR CERTAIN PURPOSES.] For the purpose of hearing and determining special proceedings of a civil nature, motions for new trials in civil actions, motions for and to dissolve or modify injunctions, motions to set aside or vacate orders of arrest and writs of attachment, and for the entry of orders and judgments, these courts are always open.

CHAPTER IV.

OF PROBATE COURTS AND COURTS OF JUSTICES OF THE PEACE.

§ 32. JURISDICTION.] The probate courts and the courts of justices of the peace possess only such jurisdiction as is conferred on them by the organic laws and the statutes of this territory.

PART 2.

CIVIL ACTIONS.

CHAPTER V.

FORM OF CIVIL ACTIONS.

§ 33. DISTINCTIONS ABOLISHED.] The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and there shall be in this territory, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.

§ 34. PARTIES NAMED.] In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

§ 35. ACTIONS UPON JUDGMENTS.] No action shall be brought upon a judgment rendered in any court of this territory, except a court of a justice of the peace, between the same parties, without leave of the court for good cause shown, on notice to the adverse party; and no action on a judgment rendered by a justice of the peace shall be brought in the same county, within five years after its rendition, except in case of his death, resignation, incapacity to act, or removal from the county, or that the process was not personally served on the defendant, or on all the defendants, or in case of the death of some of the parties, or where the docket or record of such judgment is or shall have been lost or destroyed.

§ 36. ISSUES MUST BE STATED.] Feigned issues are abolished, and instead thereof, in the cases where the power now exists to order a feigned issued, or when a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

CHAPTER VI.

TIME OF COMMENCING ACTIONS.

IN GENERAL.

§ 37. LIMITATIONS.] Civil actions can only be commenced within the periods prescribed in this code, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited, can only be taken by answer.

TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

§ 38. BY THE TERRITORY.] The territory of Dakota will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the territory to the same, unless:

1. Such right or title shall have accrued within forty years before any action or other proceeding for the same shall be commenced; or, unless,

2. The territory, or those from whom it claims, shall have received the rents and profits of such real property, or of some part thereof, within the space of forty years.

§ 39. PERSONS CLAIMING UNDER.] No action shall be brought for, or in respect to, real property, by any person claiming by virtue of grants from the territory, unless the same might have been commenced, as herein specified, in case such grant had not been issued or made.

§ 40. EXTENSION OF SAME.] When grants of real property shall have been issued or made by the territory, and the same shall be declared void by the determination of a competent court, rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the premises so conveyed may be brought either by the territory, or by any subsequent grantee of the same premises, his heirs or assigns, within twenty years after such determination was made, but not after that period.

§ 41. SEIZIN WITHIN TWENTY YEARS.] No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

§ 42. SAME.] No cause of action, or defense to an action, founded upon the title to real property, or to rents or services out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor or grantor of such person was seized or possessed of the premises in question, within twenty years before the committing of the act in respect to which such action is prosecuted, or defense made.

§ 43. ONE YEAR AFTER ENTRY.] No entry upon real estate shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued.

§ 44. POSSESSION PRESUMED.] In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

§ 45. OCCUPATION UNDER WRITTEN INSTRUMENT.] Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises, under such claim, for twenty years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

§ 46. ADVERSE POSSESSION.] For the purpose of constituting an adverse possession, by any person claiming a title founded upon a written instrument, or a judgment or a decree, land shall be deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved.
2. Where it has been protected by a substantial inclosure.
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purposes of husbandry, or the ordinary use of the occupant.
4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

§ 47. ACTUAL ADVERSE HOLDING.] Where it shall appear that there has been an actual continued occupation of premises, under a claim of title exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

§ 48. UNDER CLAIM NOT WRITTEN.] For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.

§ 49. LANDLORD AND TENANT.] Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or, where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

§ 50. EFFECT OF DESCENT.] The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

§ 51. DISABILITIES EXTEND TIME.] If a person entitled to commence any action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either:

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life.

The time during which such disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense made, after the period of twenty years, and within ten years after the disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

TIME OF COMMENCING ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

§ 52. OTHER PERIODS.] The periods prescribed in section 37 for the commencement of actions other than for the recovery of real property shall be as follows:

§ 53. TWENTY YEARS.] Within twenty years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.
2. An action upon a sealed instrument.

§ 54. SIX YEARS.] Within six years:

1. An action upon a contract, obligation or liability, express or implied, excepting those mentioned in section 53.
2. An action upon a liability created by statute, other than a penalty or forfeiture.
3. An action for trespass upon real property.
4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.
5. An action for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated.
6. An action for relief on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

§ 55. THREE YEARS.] Within three years:

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his

office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute, for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the people of this territory, except where the statute imposing it prescribes a different limitation.

§ 56. TWO YEARS.] Within two years:

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute, for a forfeiture or penalty to the people of this territory.

§ 57. ONE YEAR.] Within one year:

1. An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

§ 58. BALANCE OF OPEN ACCOUNT.] In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

§ 59. FORFEITURE BY PERSON—TERRITORY.] An action upon a statute for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same, must be commenced within one year after the commission of the offense; and if the action be not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the territory, by the district attorney where the offense was committed.

§ 60. OTHER RELIEF TEN YEARS.] An action for relief not hereinbefore provided for must be commenced within ten years after the cause of action shall have accrued.

§ 61. SAME TO PUBLIC AND PERSONS.] The limitations prescribed in this chapter, shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

§ 62. WHEN ACTION DEEMED COMMENCED.] An action is commenced as to each defendant when the summons is served on him, or on a co-defendant who is a joint contractor or otherwise united in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them, usually or last resided; or, if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt must be followed by the first publication of the summons, or the service thereof, within sixty days.

§ 63. EXCEPTION—ABSENTEE.] If, when the cause of auction shall accrue against any person, he shall be out of the territory, such action may be commenced within the terms herein respectively limited, after the return of such person into this territory; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this territory; the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

§ 64. SAME—DISABILITIES.] If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge; or in execution under the sentence of a criminal court, for a term less than his natural life.

The time of such disability is not a part of the time limited for the commencement of the action: *Provided*, That the period within which the action must be brought cannot be extended more than five years by any such disability except infancy, nor can it be extended in any case longer than one year after the disability ceases.

§ 65. DEATH.] If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

§ 66. WAR.] When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is part of the period limited for the commencement of the action.

§ 67. WHEN JUDGMENT REVERSED.] If an action be commenced within the time prescribed therefor, and a judgment therein be reversed on appeal, the plaintiff, or, if he die and cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

§ 68. STAY BY INJUNCTION, &C.] When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

§ 69. WHEN DISABILITY AVAILABLE.] No person can avail himself of a disability, unless it existed when his right of action accrued.

§ 70. CO-EXISTING DISABILITIES.] When two or more disabilities co-exist at the time the right of action accrues, the limitation does not attach until they are all removed.

§ 71. BANK NOTES.] This chapter does not affect actions to enforce the payment of bills, notes or other evidences of debt, issued by moneyed corporations, or issued or put in circulation as money.

§ 72. MONEYED CORPORATIONS.] This chapter shall not affect actions against directors or stockholders of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

§ 73. NEW PROMISE IN WRITING.] No acknowledgment or promise is sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same be contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

CHAPTER VII.

PARTIES TO CIVIL ACTIONS.

§ 74. PARTY IN INTEREST.] Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section 76; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract. But an action may be maintained by a grantee of land in the name of a grantor, when the grant or grants are void by reason of the actual possession of a person claiming under a title adverse to that of the grantor at the time of the delivery of the grant, and the plaintiff shall be allowed to prove the facts to bring the case within this provision.

§ 75. ASSIGNEE—EQUITIES.] In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before due.

§ 76. EXECUTORS AND TRUSTEES.] An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

§ 77. MARRIED WOMAN.] When a married woman is a party, her appearance, the prosecution or defense of the action, and the joinder with her of any other person or party, must be governed by the same rules as if she were single.

§ 78. BY GUARDIAN FOR INFANT.] When an infant is a party, he must appear either by his general guardian, or by a guardian appointed by the court in which the action is prosecuted, or by a judge thereof. A guardian may be appointed in any case, when it is deemed by the court in which the action is prosecuted, or by a judge thereof, expedient to represent the infant in the action, notwithstanding he may have a general guardian, and may have appeared by him.

§ 79. HOW GUARDIAN APPOINTED.] The guardian shall be appointed:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of his general or testamentary guardian, if he has any, or of a relative or friend of the infant. If made by a relative or friend of the infant, notice thereof must first be given to such guardian, if he has one; if he has none, then to the person with whom such infant resides.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the service of summons. If he be under the age of fourteen, or neglects so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant, after notice of such application being first given to the general or testamentary guardian of such infant, if he has one within this territory; if he has none, then to the infant himself, if over fourteen years of age, and within the territory; or, if under that age, and within the territory, to the person with whom such infant resides. And in actions for the partition of real property, or for the foreclosure of a mortgage or other instrument, when an infant defendant resides out of this territory, the plaintiff may apply to the court, or a judge thereof, in which the action is pending, and will be entitled to an order designating some suitable person to be the guardian for the infant defendant, for the purposes of the action, unless the infant defendant, or some one in his behalf, within a number of days after the service of a copy of the order, which number of days shall be in the said order specified, shall procure to be appointed a guardian for the said infant; and the court shall give special directions in the order for the manner of the service thereof, which may be upon the infant himself, or by service upon any relation or person with whom the infant resides, and either by mail or personally upon the person so served. And in case an infant defendant, having an interest in the event of the action, shall reside in any state with which there shall not be a regular communication by mail, on such fact satisfactorily appearing to the court, the court may appoint a guardian ad litem for such absent infant party, for the purpose of protecting the right of such infant in said action, and on such guardian ad litem process, pleadings and notices in the action may be served, in the like manner as upon a party residing in this territory.

§ 80. GUARDIAN'S SECURITY.] No guardian appointed for an infant under the provisions of this chapter shall be permitted to receive any money or other property of the infant, except costs and expenses allowed to the guardian by the court, or recovered by the infant in the action, until he has given sufficient security, approved by the judge of the court, to account for and apply the same under the direction of the court. And no person appointed a guardian for the purpose of defending an action brought against an infant shall be liable for costs of such action, unless specially charged by the order of the court for some personal misdemeanor therein.

§ 81. WHO TO BE PLAINTIFFS.] All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this chapter.

§ 82. DEFENDANTS.] Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and in an action to recover possession of real estate, the landlord and tenant thereof may be joined as defendants, and any person claiming title or right of possession to real estate may be made parties plaintiff or defendant, as the case may require, to any such action.

§ 83. PARTIES TO BE JOINED.] Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

§ 84. BILLS AND NOTES.] Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, whether the action is brought upon the instrument, or by a party thereto to recover against other parties liable over to him, and persons liable severally for the same debt or demand, although upon different obligations or instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

§ 85. ACTION DOES NOT ABATE.] No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, or other disability of a party, the court, on motion, at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by or against his representatives or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law. At any time after the death, or other disability of the party plaintiff, the court in which an action is pending, upon notice to such persons as it may direct, and upon application of any person aggrieved, may, in its discretion, order that the action be deemed abated, unless the same be continued by the proper parties, within a time to be fixed by the court, not less than six months nor exceeding one year from the granting of the order.

§ 86. SUCCESSOR MAY REVIVE JUDGMENT.] Where judgment has heretofore or shall hereafter be recovered for the possession of real property, and the party recovering such judgment shall have died subsequent to the recovery thereof, his successor in interest in said real property, whether by grant, devise, or inheritance, may revive said judgment and enforce the same by execution, on motion, within one year after said death, or afterwards on supplemental complaint.

§ 87. NON-RESIDENT INTESTATE.] When an intestate not being an inhabitant of the territory shall die out of the territory not leaving assets therein, and there shall be pending in the supreme court an appeal brought by such intestate from a judgment against him, the court in which such appeal is pending, may order the judgment appealed from affirmed, with costs, unless the attorney for the intestate on said appeal procure such action to be revived within six months after notice to perfect such appeal by the substitution of a representative in said action.

§ 88. DEATH OF ONE OF SEVERAL PARTIES.] Where one of two or more plaintiffs, or one of two or more defendants, in an action, dies, and only part of the cause of action, or of several distinct causes of action, survives to or against the others, the action may proceed without bringing in the person who has succeeded to the rights of the deceased party; and the judgment shall not affect him, or his interest in the subject of the action. But the court may order such successor of a deceased party, or any person who claims to be such successor, to be brought in as a party, either plaintiff or defendant, whenever it appears proper to do so, upon his own application or upon the application of any party to the action, and, if necessary, that supplemental pleadings be put in. The defendant, or surviving defendant, in the action, may proceed against such successor, in the same manner as a plaintiff, to bring him in and have his rights settled by judgment.

§ 89. POWER OF COURT—INTERPLEADER.] The court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must cause them to be brought in.

§ 90. INTERVENTION WHEN.] Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

§ 91. INTERPLEADER.] A defendant against whom an action is pending upon a contract, or for specific, real, or personal property, may at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion, make the order.

CHAPTER VIII.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

§ 92. WHERE SUBJECT MATTER IS.] Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, in the cases provided by statute:

1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.
2. For the partition of real property.
3. For the foreclosure of a mortgage of real property.
4. For the recovery of personal property distrained for any cause.

§ 93. WHERE THE CAUSE AROSE.] Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

1. For the recovery of a penalty or forfeiture imposed by statute, except that, when it is imposed for an offense committed on a lake or river, or other stream of water situated in two or more counties the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed.

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or his aid, shall do anything touching the duties of such officer.

§ 94. WHERE ANY PARTY RESIDES.] In all other cases the action shall be tried in the county in which the parties or any of them, shall reside at the commencement of the action, or, if none of the parties shall reside in the territory, the same may be tried in any county which the plaintiff shall designate in his complaint, subject, however, to the power of the court to change the place of trial in the cases provided by statute.

§ 95. DEFENDANT MUST ASK CHANGE—COURT MAY CHANGE.] If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expire, demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court, as provided in this section. The court may change the place of trial in the following cases:

1. When the county designated for that purpose in the complaint is not the proper county.
2. When there is reason to believe that an impartial trial cannot be had therein.
3. When the convenience of witnesses and the ends of justice would be promoted by the change.

When the place of trial is changed all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties, in writing, duly filed, or order of the court; and the papers shall be filed or transferred accordingly.

CHAPTER IX.

MANNER OF COMMENCING CIVIL ACTIONS.

§ 96. BY SUMMONS.] Civil actions in the courts of this territory shall be commenced by the service of a summons.

§ 97. REQUISITES OF SAME] The summons shall be subscribed by the plaintiff or his attorney, and directed to the defendant, and shall require him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the territory, to be therein specified, in which there is a postoffice, within thirty days after the service of the summons, exclusive of the day of service.

§ 98. NOTICES REQUIRED IN.] The plaintiff shall also insert in the summons a notice, in substance as follows:

1. In action arising on contract, for the recovery of money only, that he will take judgment for a sum specified therein, if the defendant fail to answer the complaint in thirty days after the service of the summons.
2. In other actions, that if the defendant shall fail to answer the complaint within thirty days after the service of the summons, the plaintiff will apply to the court for the relief demanded in the complaint.

§ 99. SERVICE OF COMPLAINT.] A copy of the complaint need not be served with the summons. In such case, the summons must state where the complaint is or will be filed; and if the defendant, within thirty days thereafter, cause notice of appearance to be given, and, in person or by attorney, demand in writing a copy of the complaint, specifying a place within the territory where it may be served, a copy thereof must, within twenty days thereafter be served accordingly, and after such service, the defendant has thirty days to answer, but only one copy need be served on the same attorney.

§ 100. NOTICE OF NO PERSONAL CLAIM.] In the case of a defendant against whom no personal claim is made, the plaintiff may deliver to such defendant, with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects specific, real or personal property, and that no personal claim is made against such defendant, in which case no copy of the complaint need be served on such defendant, unless within the time for answering he shall, in writing, demand the same. If a defendant on whom such notice is served unreasonably defend the action, he shall pay costs to the plaintiff.

§ 101. LIS PENDENS—EFFECT OF.] In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any other time afterwards, or whenever a warrant of attachment of property shall be issued, or at any time afterwards, the plaintiff, or a defendant when he sets up an affirmative cause of action in his answer, and demands substantive relief, at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the register of deeds of each county in which the real property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and the description of the real property in that county affected thereby; but if the action be for the foreclosure of a mortgage, no such notice need be filed. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed, or subsequently recorded, shall be deemed a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section, an action shall be deemed to be pending from the time of filing such notice: *Provided, however*, That such notice shall be of no avail unless it shall be followed by the first publication of the summons on an order therefor, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced, may, in its discretion, at any time after the action shall be settled, discontinued or abated, as is provided in section number eighty-five, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be cancelled of record by the register of deeds of any county in whose office the same may have been filed or recorded; and such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall refer to the order, and for which the register of deeds shall be entitled to a fee of twenty-five cents.

§ 102. SUMMONS—HOW SERVED.] The summons shall be served by delivering a copy thereof as follows:

1. If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, a director, or managing agent thereof; but such service can be made in respect to a foreign corporation only when it has property in this territory, or the cause of action arose therein, or when such service shall be made within this territory personally upon the president, treasurer, secretary, or duly authorized agent thereof.

2. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother or guardian; or if there be none

within the territory, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

3. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs in consequence of habitual drunkenness, and for whom a guardian has been appointed, to such guardian and to the defendant personally.

4. In all other cases, to the defendant personally; and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling house, in the presence of one or more of the members of his family over the age of fourteen years; or, if the defendant reside in the family of another, with one of the members of the family in which he resides over the age of fourteen years.

Service made in any of the modes provided in this section shall be taken and held to be personal service.

§ 103. BY WHOM SUMMONS SERVED.] The summons may be served by the sheriff of the county where the defendant may be found, or by any other person not a party to the action. The service shall be made, and the summons returned with proof of the service to the person whose name is subscribed thereto, with all reasonable diligence. The person subscribing the summons may, at his option, by an indorsement on the summons, fix a time for the service thereof, and the service shall then be made accordingly.

§ 104. BY PUBLICATION—CASES AND MANNER.] Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the territory, and that fact appears by affidavit to the satisfaction of the court or a judge thereof, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this territory, such court or judge may grant an order that the service be made by the publication of a summons in either of the following cases:

1. Where the defendant is a foreign corporation, has property within the territory, or the cause of action arose therein.

2. Where the defendant, being a resident of this territory, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

3. Where he is not a resident of this territory, but has property therein, and the court has jurisdiction of the subject of the action.

4. Where the subject of the action is real or personal property in this territory, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein.

5. Where the action is for divorce or for a decree annulling a marriage, the order must direct the publication to be made in some newspaper to be designated as most likely to give notice to the person to be served, and for such lengths of time as may be deemed reasonable, not less than once a

week for six weeks. In case of publication, the court or judge must also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence, unless it appear that such residence is neither known to the party making the application, nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint, out of the territory, is equivalent to publication and deposit in the post office. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered or his representatives, may, in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof, and within seven years after its rendition, on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected, or otherwise enforced, such restitution may thereupon be compelled as the court directs; but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected. And in all cases where publication is made, the complaint must be first filed, and the summons, as published, must state the time and place of such filing. In actions for the foreclosure of mortgages on real estate, already instituted, or hereafter to be instituted, if any party or parties having any interest in or lien upon such mortgaged premises are unknown to the plaintiff, and the residence of such party or parties cannot, with reasonable diligence, be ascertained by him, and such fact shall be made to appear, by affidavit, to the court, or to a justice thereof, such court or justice may grant an order that the summons be served on such unknown party or parties by publishing the same for six weeks, once in each week successively, in a newspaper printed in the county where the premises are situated, provided a paper be published in such county, and if no paper be published in the county, then in a paper published nearest the county seat of such county in the territory, which publication shall be equivalent to a personal service on such unknown party or parties.

§ 105. JOINT AND SEVERAL DEBTORS.] Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served; or,

2. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

3. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

4. If the name of one or more partners shall, for any cause, have been omitted in any action in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff, in case the judgment therein shall remain unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.

§ 106. WHEN SERVICE COMPLETE] In the cases mentioned in section 104 the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

§ 107. PROOF OF SERVICE—ACCEPTANCE.] Proof of the service of the summons, and of the complaint or notice, if any, accompanying the same, must be as follows:

1. If served by the sheriff, his certificate thereof; or,
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the postoffice, as required by law, if the same shall have been deposited; or,
4. The written admissions of the defendant.

In cases of service otherwise than by publication, the certificate, affidavit, or admission, must state the time, place, and manner, of service.

§ 108. JURISDICTION—APPEARANCE.] From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

CHAPTER X.

OF PLEADINGS IN CIVIL ACTIONS.

THE COMPLAINT.

§ 109. FORMS ABOLISHED.] All forms of pleading heretofore existing are abolished; and hereafter, the forms of pleading in civil actions in courts of record, and the rules by which the efficiency of the pleadings is to be determined, are those prescribed by this act.

§ 110. COMPLAINT.] The first pleading on the part of the plaintiff is the complaint.

§ 111. WHAT TO CONTAIN.] The complaint shall contain:

1. The title of the cause, specifying the name of the court in which the action is brought, the name of county in which the plaintiff desires the

trial to be had, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition.

3. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

THE DEMURRER.

§ 112. DEFENDANT MAY DEMUR OR ANSWER.] The only pleading on the part of defendant is either a demurrer or an answer. It must be served within thirty days after the service of the copy of the complaint.

§ 113. WHEN MAY DEMUR.] The defendant may demur to the complaint when it shall appear upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,
2. That the plaintiff has not legal capacity to sue; or,
3. That there is another action pending between the same parties, for the same cause; or,
4. That there is a defect of parties, plaintiff or defendant; or,
5. That several causes of action have been improperly united; or,
6. That the complaint does not state facts sufficient to constitute a cause of action.

§ 114. REQUISITES OF DEMURRER.] The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it do so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

§ 115. IF COMPLAINT BE AMENDED.] If the complaint be amended, a copy thereof must be served on the defendant, who must answer it within thirty days, or the plaintiff, upon filing with the clerk, on due proof of the service, and of the defendant's omission, may proceed to obtain judgment, as provided by section 199, but where an application to the court for judgment is necessary, ten day's notice thereof must be given to the defendant.

§ 116. WHEN ANSWER.] When any of the matters enumerated in section 113 do not appear upon the face of the complaint, the objection may be taken by answer.

§ 117. WHEN OBJECTION WAIVED.] If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

THE ANSWER.

§ 118. REQUISITES OF ANSWER.] The answer of the defendant must contain:

1. A general or specific denial of each material allegation of the com-

plaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defense or counter-claim, in ordinary and concise language, without repetition.

§ 119. REQUISITES OF COUNTER-CLAIM.] The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.

2. In an action arising on contract, any other cause of action arising also on contract and existing at the commencement of the action. The defendant may set forth by answer as many defenses and counter-claims as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. They must each be separately stated, and refer to the causes of action which they are intended to answer, in such manner that they may be intelligibly distinguished.

§ 120. DEMURRER AND ANSWER.] The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue.

§ 121. SHAM DEFENSES.] Sham and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the courts may in their discretion impose.

THE REPLY.

§ 122. REPLY WHEN—DEMURRER TO ANSWER.] When the answer contains new matter constituting a counter-claim; the plaintiff may, within thirty days, reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege, in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, where, upon its face, it does not constitute a counter-claim or defense, and the plaintiff may demur to one or more of such defenses or counter-claims, and reply to the residue of the counter-claims. And in other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may, in its discretion, on the defendant's motion, require a reply to such new matter; and in that case, the reply shall be subject to the same rules as a reply to a counter-claim.

§ 123. JUDGMENT ON ANSWER.] If the answer contain a statement of new matter constituting a counter-claim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move, on a notice of not less than ten days, for such judgment as he is entitled to upon such statement, and if the case require it, a writ of inquiry of damages may be issued.

§ 124. DEMURRER TO REPLY.] If a reply of the plaintiff to any defense set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof.

GENERAL RULES OF PLEADING.

§ 125. SUBSCRIBED—VERIFICATION.] Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading, except a demurrer, must be verified also.

§ 126. REQUISITES OF VERIFICATION.] The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and, as to those matters, he believes it to be true, and must be by the affidavit of the party, or if there be several parties united in interest, and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides, and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the action or defense be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the pleading is verified by any other person than the party, he shall set forth in the affidavit his knowledge, or the grounds of his belief on the subject, and the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; and when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. And no pleading can be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading.

§ 127. STATEMENT OF ACCOUNT.] It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after the demand thereof in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a "further account," when the one delivered is defective; and the court may in all cases order a bill of particulars of the claim of either party to be furnished.

§ 128. LIBERAL CONSTRUCTION.] In the construction of a pleading for the purpose of determining its effect, its allegation shall be liberally construed, with a view of substantial justice between the parties.

§ 129. MAKING PLEADING DEFINITE.] If irrelevant or redundant matter be inserted in a pleading, it may be stricken out, on motion of any person aggrieved thereby. And when the allegations of a pleading are so in-definite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

§ 130. PLEADING A JUDGMENT.] In pleading a judgment, or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

§ 131. CONDITIONS PRECEDENT.] In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defense founded upon an instrument for the payment of money only, it shall be sufficient for a party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specified sum which he claims.

§ 132. PRIVATE STATUTE.] In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute, by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

§ 133. LIBEL OR SLANDER.] In an action for libel or slander, it shall not be necessary to state in the complaint any intrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted, the plaintiff shall be bound to establish, on trial, that it was so published or spoken.

§ 134. SAME—DEFENDANTS' ANSWER.] In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give, in evidence, the mitigating circumstances.

§ 135. ANSWER OF POSSESSION.] In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property.

§ 136. JOINDER OF ACTIONS—MORTGAGES.] The plaintiff may unite in the same complaint several causes of action, whether they be such as have been heretofore denominated legal or equitable, or both, where they all rise out of:

1. The same transaction, or transactions connected with the same subject of action.

2. Contract, express or implied; or,

3. Injuries, with or without force, to person and property, or either; or,

4. Injuries to character; or,

5. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or for waste committed thereon; or,

6. Claims to recover personal property, with or without damages for the withholding thereof; or,

7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action, so united, must all belong to one of these classes, and, except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated. In actions to foreclose mortgages, the court shall have power to adjudge and direct the payment, by the mortgagor, of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage; and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor, the plaintiff may make such person a party to the action, and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person, and may enforce such judgment as in other cases.

§ 137. ALLEGATIONS—WHEN DEEMED TRUE OR DENIED.] Every material allegation of the complaint, not controverted by the answer, as prescribed in section 118, and every material allegation of new matter in the answer, constituting a counter-claim, not controverted by the reply, as prescribed in section 122, shall, for purposes of the action be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in a reply, is to be deemed controverted by the adverse party upon a direct denial or avoidance, as the case may require.

MISTAKES IN PLEADING, AND AMENDMENTS.

§ 138. MATERIAL AND MISLEADING.] No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually so misled the adverse party to his prejudice, in maintaining his action of defense, upon the merits. Whenever it shall be alleged that a party has been misled, the fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as shall be just.

§ 139. IF NOT MATERIAL.] Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

§ 140. FAILURE TO PROVE VARIANCE.] Where, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance, within the last two sections, but a failure of proof.

§ 141. AMENDMENTS—WHEN AND HOW.] Any pleading may be once amended by the party of course, without costs, and without prejudice to the proceedings already had, at any time within twenty days after it is served, or at any time before the period for answering it expires; or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading, unless it be made to appear to the court that it was done for the purpose of delay, and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is or may be noticed; and if it appear to the court that such amendment was made for such purpose, the same may be stricken out, and such terms imposed as to the court may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer, either at a general or special term, the court may, in its discretion, if it appear that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. If the demurrer be allowed for the cause mentioned in the fifth subdivision of section 113 the court may, in its discretion, and upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.

§ 142. COURT MAY AMEND—TERMS.] The court may, before or after judgment, in furtherance of justice, and such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the case; or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved.

§ 143. PLEADING AFTER TIME.] The court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this code, or, by an order, enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may, in like manner, and upon like terms, permit an amendment of such proceedings, so as to make it conformable thereto.

§ 144. UNKNOWN NAME.] When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding, by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

§ 145. TRIVIAL DEFECTS DISREGARDED.] The court shall, in every stage of action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party: and no judgment shall be reversed or affected by reason of such error or defect.

§ 146. SUPPLEMENTAL PLEADING.] The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint, answer or reply, alleging facts material to the case, occurring after the former complaint, answer or reply, or of which the party was ignorant when his former pleading was made.

CHAPTER XI.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

§ 147. CLASSIFIED.] The provisional remedies in civil actions are:

1. Arrest and bail.
2. Claim and delivery of personal property.
3. Injunction.
4. Attachment.
5. Receivers.
6. Deposit in court.

ARTICLE I.—ARREST AND BAIL.

§ 148. ARREST LIMITED—CONTEMPT.] No person shall be arrested in a civil action, except as prescribed by this code; but this provision shall not apply to proceedings for contempt.

§ 149. CASES WHEN DEFENDANT ARRESTED.] The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is not a resident of the territory, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or converting property.

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or for property embezzled or fraudulently misapplied, by a public officer, or by an attorney, solicitor or counselor, or by an officer or agent of a corporation or banking association, in the course of his employment as such, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff, and with the intent that it should not be found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

5. When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors. But no female shall be arrested in any action, except for a willful injury to person, character or property.

§ 150. WHERE ORDER OBTAINED.] An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought.

§ 151. BASIS OF ORDER.] The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 149. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed in the office of the clerk of the court.

§ 152. UNDERTAKING FROM PLAINTIFF.] Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff, without sureties, he shall annex thereto an affidavit that he is a resident and householder or freeholder within the territory, and worth double the sum specified in the undertaking, over all his debts and liabilities, and exclusive of all property exempt from execution by the laws of this territory.

§ 153. WHEN ORDER ISSUED AND SERVED.] The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and return the order, at a place and time therein mentioned, to the plaintiff or attorney, by whom it shall be subscribed or indorsed. But said order of arrest shall be of no avail, and shall be vacated or set aside on motion, unless the same is served upon the defendant, as provided by law, before the docketing of any judgment in the action; and the defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint in the action, and to move to vacate the order of arrest, or to reduce the amount of bail.

§ 154. PAPERS TO DEFENDANT.] The affidavit and order of arrest shall be delivered to the sheriff, who upon arresting the defendant, shall deliver to him a copy thereof.

§ 155. SHERIFF'S DUTIES—BAIL.] The sheriff must execute the order by arresting the defendant, and keeping him in custody until discharged by law, and may call the power of the county to his aid in the execution of the arrest, as in case of process. The defendant may give bail whenever arrested, at any hour of the day or night, and must have reasonable opportunity to procure it, before being committed to prison.

§ 156. DISCHARGE.] The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article.

§ 157. BAIL HOW GIVEN.] The defendant may give bail by causing a written undertaking, in the sum specified in the order of arrest, to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself answerable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment thereon, or if he be arrested for the cause mentioned in the third subdivision of section 149, an undertaking to the same effect as that provided in section 181.

§ 158. SURRENDER BY BAIL.] At any time before a failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated; and on filing the order and the papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in subdivision three of section 149, so as to discharge the bail from an undertaking given to the effect provided by section 181.

§ 159. BAIL MAY ARREST.] For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

§ 160. ACTION AGAINST BAIL.] In case of failure to comply with the undertaking, the bail may be proceeded against by action only.

§ 161. BAIL EXONERATED.] The bail may be exonerated either by the death of the defendant, or his imprisonment in a state or territorial prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

§ 162. PLAINTIFF MAY EXCEPT TO BAIL.] Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the plaintiff, or attorney by whom it is subscribed, with his return indorsed, and a certified copy of the undertaking of the bail. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability.

§ 163. JUSTIFICATION.] On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the court, at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form prescribed in section 157.

§ 164. REQUISITES OF BAIL.] The qualifications of bail must be as follows:

1. Each of them must be a resident and householder or freeholder within the territory.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, or a justice of the peace, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

§ 165. EXAMINATION OF BAIL.] For the purpose of justification, each of the bail shall attend before the judge, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

§ 166. ALLOWANCE OF.] If the judge or justice of the peace find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.

§ 167. DEPOSIT—DISCHARGE.] The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

§ 168. PAYMENT INTO COURT.] The sheriff shall, within four days after the deposit, pay the same into court, and shall take from the officer receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff and the other to the defendant or his attorney. For any default in making such payment the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

§ 169. REFUNDED ON APPROVED BAIL.] If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section 163 any time before judgment: thereupon the judge before whom the justification is had, shall direct in the order of allowance, that the money deposited be refunded by the sheriff to defendant, and it shall be refunded accordingly.

§ 170. APPLIED ON JUDGMENT.] Where money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unpaid.

§ 171. SHERIFF'S LIABILITY.] If, after being arrested, when there is a jail to which the defendant may be committed, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability, by the giving and justification of bail, as provided in sections 163, 164, 165 and 166, at any time before process against the person of the defendant, to enforce an order or judgment in the action.

§ 172. JUDGMENT AGAINST SHERIFF.] If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency.

§ 173. BAIL LIABLE TO SHERIFF.] The bail taken upon the arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for damages which he may sustain by reason of such omission.

§ 174. MOTION TO VACATE ARREST.] A defendant arrested may, at any time before judgment, apply, on motion, to vacate the order of arrest, or to reduce the amount of bail.

§ 175. HEARD UPON AFFIDAVITS.] If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

ARTICLE II.—CLAIM AND DELIVERY OF PERSONAL PROPERTY.

§ 176. WHEN MAY CLAIM.] The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this article.

§ 177. PLAINTIFF'S AFFIDAVIT.] Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, stating:

1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.
2. That the property is wrongfully detained by the defendant.
3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.
4. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and
5. The actual value of the property.

§ 178. REQUISITION TO SHERIFF.] The plaintiff may, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

§ 179. SECURITY BY PLAINTIFF.] Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

§ 180. EXCEPTIONS BY DEFENDANT.] The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

§ 181. RE-DELIVERY TO DEFENDANT.] At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required, within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 186.

§ 182. JUSTIFICATION.] The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a judge or justice of the peace, in the same manner as upon bail on arrest; upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

§ 183. SAME.] The qualifications of sureties, and their justification, shall be as are prescribed by sections 164 and 165, in respect to bail upon an order of arrest.

§ 184. CONCEALED PROPERTY.] If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open. and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

§ 185. KEEPING PROPERTY.] When the sheriff shall have taken property, as in this article provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

§ 186. CLAIM BY THIRD PERSONS.] If the property taken be claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim, by an undertaking, executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff, exclusive of property exempt from execution, and freeholders or householders of the county. And no claim to such property, by any other person than the defendant or his agent, shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

§ 187. PAPERS FILED WITH CLERK.] The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

ARTICLE III.—INJUNCTION.

§ 188. INJUNCTION BY ORDER.] The writ of injunction, as a provisional remedy, is abolished, and an injunction by order is substituted therefor. The order may be made by the court in which the action is brought, or by a judge thereof in the cases provided in the next section, and, when made by a judge, may be enforced as the order of the court.

§ 189. CASES WHEN GRANTED.] An injunction may be granted in either of the following cases:

1. It shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

2. When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

3. And when, during the pendency of an action, it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

§ 190. TIME—PAPERS SERVED.] The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactory to the court or judge, by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

§ 191. AFTER ANSWER.] An injunction shall not be allowed after the defendant shall have answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

§ 192. SECURITY—DAMAGES.] Where no provision is made by statute as to security upon an injunction, the court or judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the court shall direct.

§ 193. ORDER TO SHOW CAUSE.] If the court or judge deem it proper that the defendant, or any of the several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

§ 194. AGAINST CORPORATION.] An injunction to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor, to the proper officer of the corporation, except when the territory is a party to the proceeding.

§ 195. APPLICATION TO VACATE.] If the injunction be granted by a judge of the court, without notice, the defendant, at any time before the trial, may apply, upon notice, to a judge of the court in which the action is brought, to vacate or modify the same. The application may be made upon the complaint, and the affidavits on which the injunction was granted, or upon affidavits on the part of the defendant, with or without the answer.

§ 196. COUNTER AFFIDAVITS.] If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other proofs, in addition to those on which the injunction was granted.

ARTICLE IV.—ATTACHMENT.

§ 197. PROPERTY OF NON-RESIDENTS, &C., MAY BE ATTACHED.] In an action arising on contract for the recovery of money only; or, in an action for the wrongful conversion of personal property, against a corporation created by or under the laws of any other territory, state, government or country; or, against a defendant who is not a resident of this territory; or, against a defendant who has absconded or concealed himself; or, whenever any person or corporation is about to remove any of his or its property from this territory; or, has assigned, disposed of, secreted, or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors, as hereinafter mentioned. The plaintiff, at the time of issuing the summons, or any time afterwards, may have the property of such defendant or corporation attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the plaintiff may recover; and for the purposes of this section an action shall be deemed commenced when the summons is issued: *Provided, however,* That personal service of such summons shall be made, or publication thereof commenced within thirty days.

§ 198. WARRANT ISSUED BY CLERK—SEAL.] A warrant of attachment must be obtained from the clerk of the court in which the action is brought; and such warrant of attachment must be attested in the name of the presiding judge and must be sealed with the seal of the court.

§ 199. AFFIDAVIT—REQUISITES.] The warrrant may issue upon affidavit, stating:

1. That a cause of action exists against such defendant, specifying the amount of the claim and the grounds thereof; and,

2. That the defendant is either a foreign corporation, or not a resident of this territory, or has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or,

3. That such corporation or person has removed, or is about to remove, any of his or its property from the territory with intent to defraud his or its creditors; or,

4. Has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, any of his or its property with the like intent, whether such defendant be a resident of this territory or not.

§ 200. PLAINTIFF'S UNDERTAKING.] Before issuing the warrant, the clerk must require a written undertaking on the part of the plaintiff with sufficient surety, to the effect that if the defendant recover judgment, or the attachment be set aside by the order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum named in the undertaking, which must be at least the amount of the claim specified in the affidavit, and in no case less than two hundred and fifty dollars.

§ 201. REQUISITES OF WARRANT.] The warrant must be directed to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be, attached; in which case, to take such undertaking. Several writs may be issued at the same time to the sheriffs of different counties.

§ 202. EXECUTION OF WARRANT.] The sheriff to whom such warrant of attachment is directed and delivered, must immediately attach all the real property of such debtor and all his personal estate, or so much thereof as may be sufficient to satisfy the plaintiff's demand, costs and expenses, and including debts, credits, money and bank notes, except property exempt from execution; and must take into his custody all books of accounts, vouchers, evidences of indebtedness, and all papers relating to the property, debts, credits, and effects of such debtor, together with all evidences of his title to real property.

§ 203. INVENTORY—PERISHABLE PROPERTY.] Immediately upon making such seizure he shall make a just and true inventory of all the property so seized, and of the books, vouchers, and papers, taken into his custody, stating therein the estimated value of the several articles and kinds of personal property, enumerating such of them as are perishable, and giving a description of the real property so attached, which inventory must be signed by the sheriff, attached to and made a part of the return on the warrant of attachment. And any subsequent execution of the warrant of attachment upon other property of the debtor, must be made and an inventory thereof made and returned in like manner.

§ 204. CUSTODY AND COLLECTION OF PROPERTY.] The sheriff must keep the property seized by him, or the proceeds of such as shall have been sold, to answer any judgment which may be obtained in such action, and must, subject to the direction of the court or judge, collect and receive into his possession all debts, credits and effects of the debtor. The sheriff may also take such legal proceedings, either in his own name or in the name of such debtor, as may be necessary for that purpose, and discontinue the same at such times and on such terms as the court or judge may direct.

§ 205. PERISHABLE—SOLD UNDER ORDER.] If any ot the property so seized shall be perishable, the sheriff must sell the same at public auction, under an order of the court, or a judge thereof, and must retain in his hands the proceeds of such sale after deducting his expenses, which proceeds must be paid into court and there abide its further order.

§ 206. CLAIMED PROPERTY—SHERIFF'S JURY.] If any property so seized be claimed by or on behalf of any person other than such defendant, the sheriff may summon a jury and try the validity of such claim in the same manner and with like effect as in case of seizure under execution.

§ 207. STOCKS AND CORPORATE INTERESTS.] The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in this territory of such defendant, shall be liable to be attached and levied upon, and sold to satisfy the judgment and execution.

§ 208. PROPERTY INCAPABLE OF DELIVERY.] The execution of the attachment upon any such rights, shares, or any debts, or other property, incapable of manual delivery to the sheriff, must be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation, or the secretary, cashier, or managing agent thereof, or with the debtor or individual holding or occupying such property, with a notice showing the property levied on, or, if the property attached be unoccupied real property, by putting a certified copy of such warrant upon the outer door of the court house, or other building in which the district court shall be held within the county or judicial subdivision in which such unoccupied real property shall be situated.

§ 209. CERTIFICATE OF DEFENDANT'S INTEREST.] Whenever the sheriff shall, with a warrant of attachment, or execution against the defendant, apply to such officer, debtor, or individual, for the purpose of attaching or levying upon such property, such officer, debtor, or individual shall furnish him with a certificate under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or any incumbrance thereon, or the amount and description of the property held by such association, corporation, or individual, for the benefit of or debt owing to the defendant. If such officer, debtor or individual refuse to do so, or if it be made to appear by affidavit or otherwise to the satisfaction of the court or judge thereof, that there is reason to suspect that any certificate given by him is untrue, or that it fails to fully set forth the facts required to be shown thereby, he may be required by the court or judge to attend before him, and be examined on oath concerning the same, and obedience to such order may be enforced by attachment.

§ 210. JUDGMENT—HOW SATISFIED.] In case judgment be entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose:

1. By paying over to such plaintiff the proceeds of all sales of perishable property, and of any vessel, or share or interest in any vessel sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

2. If any balance remain due, and an execution shall have been issued on such judgment, he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in subdivision four of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such defendant.

3. If any of the attached property belonging to the defendant, shall have passed out of the hands of the sheriff without having been sold or converted into money, such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment; and any person who shall willfully conceal or withhold such property from the sheriff, shall be liable to double damages, at the suit of the party injured.

4. Until the judgment against the defendant shall be paid, the sheriff may proceed to collect the notes and other evidences of debts that may have been seized or attached under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings and apply the proceeds thereof to the payment of the judgment. At the expiration of six months from the docketing of the judgment, the court shall have power upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff since the service of the attachment, the property attached, and the disposition thereof, and also the affidavit of the sheriff that he has used diligence and endeavored to collect the evidences of debt in his hands so attached, and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same, upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the court shall make such rule or order, as to the service of notice and the time of service, as shall be deemed just. When the judgment and all costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

§ 211. PLAINTIFF MAY PROSECUTE ACTIONS—UNDERTAKING.] The actions herein authorized to be brought by the sheriff may be prosecuted by the plaintiff, or under his direction, upon the delivery by him to the sheriff of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff from all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases, when required by the sheriff, justify by making an affidavit that each is a householder, and worth double the amount of the penalty of the bond, over and above all demands and liabilities, and exclusive of property exempt from execution.

§ 212. DELIVERY TO DEFENDANT.] If the foreign corporation, or absent or absconding, or concealed defendant, recover judgment against the plaintiff in such action, any bond taken by the sheriff, except such as are mentioned in the last section, all the proceeds of sales and moneys collected by him, and all the property attached remaining in his hands, shall be delivered by him to the defendant, or his agent, on request, and the warrant shall be discharged, and the property released therefrom.

§ 213. DEFENDANT MAY APPLY FOR DISCHARGE.] Whenever the defendant shall have appeared in such action, he may apply to the clerk who issued the attachment, or to the court, for the discharge of the same; and, upon the discharge, all the proceeds of sales and moneys collected by him, and all property attached remaining in his hands, must be delivered or paid by him to the defendant, or his agent, and released from the attachment. And when there is more than one defendant, and several property of either of the defendants has been seized by virtue of the warrant of attachment, the defendant whose several property has been seized, may apply to the clerk who issued the warrant, or the court, for discharge of the attachment.

§ 214. UNDERTAKING FOR DISCHARGE—PLAINTIFF'S EXCEPTIONS.] Upon such application the defendant must deliver to the court or clerk, an undertaking executed by at least two sureties, who are residents and freeholders or householders in this territory, approved by such court or clerk, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which must be at least double the amount claimed by the plaintiff in his complaint. If it appear by affidavit that the property attached is worth less than the amount claimed by the plaintiff, the court, or the clerk issuing the attachment, may order the same to be appraised, and the amount of the undertaking shall then be double the amount so appraised. And the plaintiff may, within three days after receiving written notice of the filing of such undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail so to do, he shall be deemed to have waived all objection to them. When the plaintiff excepts, the sureties must justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, and may retain possession of the property attached, and the proceeds thereof in his hands, until the objection to them be either waived, as above provided, or until they justify or new sureties are substituted and justify.

§ 215. LIENOR MAY MOVE DISCHARGE.] In all cases the defendant or any person who has acquired a lien upon or interest in the defendant's property after it was attached, may move to discharge the attachment as in the case of other provisional remedies, and when there is more than one defendant, and several property of either of the defendants has been seized by virtue of the warrant of attachment, such defendant may deliver to the court or clerk an undertaking, in accordance with the provisions of the preceding section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant; and all the provisions of the preceding section relating to such undertaking apply thereto.

§ 216. PARTNERSHIP PROPERTY—UNDERTAKING.] If a warrant of attachment be levied upon the interest of one or more partners, in personal property of a partnership, the other partners, or any of them, may, at any time before judgment, apply to the court from which the warrant of attachment issued, or a judge thereof, upon affidavit stating such fact, for an order to discharge the attachment as to the partnership property. The applicant must give an undertaking, with at least two sufficient sureties to the effect that, if judgment shall be rendered in the action in favor of the plaintiff, they will pay to the sheriff on demand the amount of defendant's interest in such partnership property, the amount of such interest to be determined by reference or otherwise, as the court may direct. The amount of such undertaking must be fixed by the court or judge thereof, and must not be less than the value of the interest of the defendant in the goods, chattels, credits and effects of the partnership; and for the purpose of fixing the amount of the undertaking, the court or judge may hear affidavits or oral testimony, respecting the value of the defendant's interest in the attached property. If the plaintiff except to the sufficiency of the sureties they must justify, on notice, in like manner as provided by section 214.

§ 217. RETURN BY OFFICER.] When the warrant shall be fully executed or discharged, the sheriff must return the same with his proceedings thereon, to the court in which the action was brought.

§ 218. ACTION BEFORE CLAIM DUE.] 1. When a debtor has sold, conveyed, or otherwise disposed of his property with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or,

2. Is about to make sale, conveyance, or disposition of his property, with such fraudulent intent; or,

3. Is about to remove his property, or a material part thereof, with the intent, or to the effect, of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts.

A creditor may bring an action on a claim before it is due, and have attachment against the property of the debtor; and the proceedings on such attachment shall be conducted in all respects as if the claim were due, but judgment must not be rendered in the action under the debt or claim upon which such attachment is made and shall become due and payable.

ARTICLE V.—OF RECEIVERS.

§ 219. CASES WHEN APPOINTED.] A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed, and that the property is probably insufficient to discharge the mortgage debt.

3. After judgment, to carry the judgment into effect.

4. After judgment to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In the cases where a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 220. RECEIVERS FOR CORPORATION DISSOLVED.] Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

§ 221. WHO MAY BE RECEIVER—UNDERTAKING BY APPLICANT.] No party or person interested in an action can be appointed receiver therein, without the written consent of the party, filed with the clerk. If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

§ 222. QUALIFICATION OF RECEIVER.] Before entering upon his duties the receiver must be sworn to perform them faithfully, and, with one or more sureties, approved by the court or judge, execute an undertaking to such person and in such sum as the court or judge, may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

§ 223. POWERS.] The receiver has, under the control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

§ 224. INVESTMENT OF FUNDS ON CONSENT.] Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made except upon the consent of all the parties to the action.

ARTICLE VI.—OF DEPOSIT.

§ 225. WHAT SUBJECT TO ORDER OF DEPOSIT.] When it is admitted by the pleadings or the examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

§ 226. DISOBEDIENCE—CONTEMPT.] Whenever in the exercise of its authority, a court shall have ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver or convey it in conformity with the direction of the court.

227. DEFENDANT'S ADMISSIONS.] When the answer of the defendant, expressly, or by not denying, admits part of the plaintiff's claim to be just, the court, on motion, may order such defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or a provisional remedy.

CHAPTER XII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

ARTICLE I.—JUDGMENT UPON FAILURE TO ANSWER, &C.

§ 228. JUDGMENT DEFINED.] A judgment is the final determination of the rights of the parties in the action.

§ 229. ON FAILURE TO ANSWER COUNTER CLAIM—RELIEF—PUBLISHED SERVICE—RESTITUTION.] Judgment may be had if the defendant fail to answer the complaint as follows:

1. In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint, on one or more of the defendants, or of the summons according to the provisions of section 99, and that no answer has been received. The court shall thereupon enter judgment for the amount mentioned in the summons, against the defendant or defendants, or against one or more of the several defendants in the cases provided for in section 105. But if the complaint be not sworn to, and such action be on an instrument for the payment of money only, the court, on its production shall assess the amount due to the plaintiff thereon, and in other cases shall ascertain the amount which the plaintiff is entitled to recover in such action from his examination, under oath, or other proof, and enter the judgment for the amount so assessed or ascertained. In case the defendant give notice of appearance in the action, he shall be entitled to five days' notice of the time and place of such assessment. Where the defendant, by his answer in any such action, shall not deny the plaintiff's claim, but shall set up a counter-claim, amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counter-claim, in like manner in any such action, upon the plaintiff's filing with the clerk of the court a statement admitting such counter-claim, which statement shall be annexed to and be a part of the judgment roll.

2. In other actions the plaintiff may, upon the like proof, apply to the court, after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account, or of the proof of any

fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of money only, or of specific real or personal property, with damages for the withholding thereof, the court may order the damages to be assessed by a jury, or, if the examination of a long account be involved, by a reference as above provided. If the defendant give notice of appearance in the action before the expiration of the time for answering, he shall be entitled to eight day's notice of the time and place of application to the court for the relief demanded by the complaint.

3. In actions where the service of the summons was by publication, the plaintiff may, in like manner, apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the territory, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may, in its discretion, require the plaintiff to cause to be filed satisfactory security, to abide the order of the court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defense.

§ 230. ON FRIVOLOUS PLEADING.] If a demurrer, answer or reply be frivolous, the party prejudiced thereby, upon a previous notice of five days, may apply to a judge of the court either in or out of the court, for judgment thereon, and judgment may be given accordingly.

ARTICLE II.—ISSUES AND MODE OF TRIAL.

§ 231. ORIGIN AND CLASSES OF ISSUES.] Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

§ 232. ISSUES OF LAW.] An issue of law arises upon a demurrer to the complaint, answer or reply, or to some part thereof.

§ 233. OF FACT CLASSIFIED.] An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; or,
2. Upon new matter in the answer controverted by the reply; or,
3. Upon new matter in the reply, except an issue of law is joined thereon.

§ 234. BOTH—ORDER OF TRIAL.] Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise direct.

§ 235. TRIAL DEFINED.] A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

§ 236. BY WHOM TRIABLE.] An issue of law must be tried by the court, unless it be referred as provided in sections 271 and 272. An issue of fact in an action for the recovery of money only, or of specific, real or personal property, or for a divorce from the marriage contract, must be tried by a jury, unless a jury trial be waived as provided in section 265, or a reference be ordered, as provided in section 272. Every other issue is triable by the court, which, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it, as provided in section 272.

§ 237. SINGLE JUDGE—WHEN ISSUES TRIED.] All issues of fact, triable by a jury or by the court, must be tried before a single judge. Issues of fact must be tried at a regular term of the district court, when the trial is by jury, otherwise at a regular or special term, as the court may, by its rules, prescribe. Issues of law must be tried at a regular or special term of the district court.

§ 238. NOTE OF ISSUE—CONTENTS—ORDER OF TRIALS.] At any time after issue, and at least ten days before the court, either party may give notice of trial. The party giving the notice shall furnish the clerk, at least eight days before the court, with a note of the issue, containing the title of the action, the names of the attorneys, and the time when the last pleading was served; and the clerk shall thereupon enter the cause upon the calendar, according to the date of the issue. There need be but one notice of trial, and one note of issue from either party, and the action must then remain on the calendar until disposed of, and when called may be brought to trial by the party giving the notice. The issues on the calendar shall be disposed of in the following order, unless, for the convenience of parties or the dispatch of business, the court shall otherwise direct:

1. Issues of fact to be tried by a jury.
2. Issues of fact to be tried by the court.
3. Issues of law.

§ 239. EITHER PARTY PROCEEDS—SEPARATE TRIALS.] Either party, when the case is reached upon the calendar, and in the absence of the adverse party, unless the court, for good cause, otherwise direct, may proceed with his case, and take a dismissal of the complaint, or a verdict, or judgment, as the case may require. A separate trial between a plaintiff and any of the several defendants may be allowed by the court, whenever, in its opinion, justice will be promoted.

§ 240. WHO TO FURNISH PAPERS.] When the issue shall be brought to trial by the plaintiff, he shall furnish the court with a copy of the summons and pleadings, with the offer of the defendant, if any shall have been made. When the issue shall be brought to trial by the defendant, and the plaintiff shall neglect or refuse to furnish the court with a copy of the summons and pleadings and the offer of the defendant, the same may be furnished by the defendant.

ARTICLE III.—FORMATION OF THE TRIAL JURY.

§ 241. JURY TICKETS.] At the opening of the court the clerk must prepare separate ballots containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the names cannot be seen, and must deposit them in the trial jury box.

§ 242. CLERK TO DRAW JURY.] When the action is called for trial by jury, the clerk must draw from the trial jury box of the court the ballots containing the names of the jurors summoned until the jury is completed or the ballots are exhausted.

§ 243. CHALLENGES CLASSED—BY WHOM.] Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to three peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

§ 244. FOR CAUSE.] Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by the political code to render a person competent as a juror.
2. Consanguinity or affinity, within the fourth degree, to either party.
3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or being a partner in business with either party, or surety on any bond or obligation for either party.
4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action.
5. Interest on the part of the juror in the event of the action, or in the main question involved in the action except his interest as a member or citizen of a municipal corporation.
6. Having an unqualified opinion or belief as to the merits of the action, founded upon knowledge of its material facts, or some of them.
7. The existence of a state of mind in the juror evincing enmity against, or bias to or against, either party.
8. That he does not understand the English language as used in the courts.

§ 245. TRIAL OF SAME.] Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

§ 246. OATH TO JURORS.] As soon as the jury is completed, the following oath must be administered to the jurors:

> "You, and each of you, do solemnly swear, that you will well and truly try the matters in issue between............the plaintiff, and..............defendant, and a true verdict render according to the evidence. So help you, God."

If any person be conscientiously scrupulous of taking an oath, he shall be allowed to make affirmation, substituting for the words " So help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

ARTICLE IV.—OF THE CONDUCT OF THE TRIAL.

§ 247. ORDER OF TRIAL.] When the jury has been sworn, the trial must proceed in the following order, unless the judge for special reasons, otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part.
2. The defendant may then open his defense, and offer his evidence in support thereof.
3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.
4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument.
5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument.
6. The court may then charge the jury.

§ 248. CHARGE WHOLLY WRITTEN—GIVING AND REFUSING.] The court, in charging the jury, shall only instruct as to the law of the case; and no judge shall instruct the petit jury in any case, civil or criminal, unless such instructions are reduced to writing; and when instructions are asked which the judge cannot give, he shall write on the margin thereof the word, "refused," and such as he approves, he shall write on the margin thereof the word, "given;" and he shall, in no case, after instructions are given, qualify, modify, or in any manner explain the same to the jury, otherwise than in writing; and all instructions asked for by counsel shall be given or refused by the judge, without modification or change, unless such modification or change be consented to by the counsel asking the same.

§ 249. ORDER OF READING—BY WHOM—JURY TO HAVE—EXCEPTIONS BEFORE JUDGMENT.] All instructions given by the judge shall be read to the jury in the following order:

1. Defendant's instructions by defendant's counsel.
2. Plaintiff's instructions by plaintiff's counsel.
3. Instructions given by the judge, of his own motion, if any, by the judge giving the same; and all instructions so given and read shall be taken by the jury in their retirement, and returned into court with their verdict. Exceptions to the giving or refusing any instruction, or to its modification or change, may be taken at any time before the entry of final judgment in the case.

§ 250. VIEW BY JURY.] When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

§ 251. ADMONITIONS TO JURY.] If the jury are permitted to separate, either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

§ 252. PAPERS JURY MAY TAKE.] Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

§ 253. CONDUCT OF JURY IN RETIREMENT.] When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under charge of an officer, until they agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon a verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

§ 254. DISAGREEMENT—INFORMATION.] After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

§ 255. SICK JUROR DISCHARGED.] If, after the empaneling of a jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, the trial may proceed with the other jurors, or another juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

§ 256. PREVENTED VERDICT—NEW TRIAL.] In all cases where the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

§ 257. SEALED VERDICT—ADJOURNMENT.] While the jury are absent, the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term discharges the jury.

§ 258. RECEIVING VERDICT.] When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict, If any one answer in the negative, the jury must again be sent out.

§ 259. CORRECTING VERDICT.] When the verdict is announced, if it be informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

ARTICLE V.—OF THE VERDICT.

§ 260. GENERAL AND SPECIAL VERDICT DEFINED.] The verdict of a jury is either general or special:

1. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; and,

2. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

§ 261. WHEN EITHER—SPECIAL WHEN DIRECTED.] In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk, and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

§ 262. JURY TO FIND AMOUNT—ASSESSMENT.] When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery; and, they may also, under the direction of the court, assess the amount of the recovery, when the court gives judgment for the plaintiff on the answer.

§ 263. MUST FIND VALUE AND DAMAGES.] In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or, if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

§ 264. VERDICT AND ENTRIES.] Upon receiving a verdict an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or, if the case be reserved for argument or further consideration, the order thus reserving it.

ARTICLE VI.—OF THE TRIAL BY THE COURT.

§ 265. HOW JURY WAIVED.] Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery of specific real or personal property, with or without damages, and with the assent of the court in other actions, in manner following:

1. By failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent, in open court, entered in the minutes.

§ 266. WHEN COURT TO DECIDE.] Upon the trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty days after the cause is submitted for decision.

§ 267. SEPARATELY STATED.] In giving the decision the facts found and the conclusions must be separately stated. Judgment upon the decision must be entered accordingly.

§ 268. FINDINGS WAIVED.] Findings of fact may be waived by the several parties to an issue of fact:

1. By failing to appear at the trial.
2. By consent in writing, filed with the clerk.
3. By oral consent, in open court, entered in the minutes.

§ 269. PREPARATION OF FINDINGS BY PARTIES.] At the time the cause is submitted the judge may direct either or both parties to prepare findings of facts, unless they have been waived, and when so directed the party must within two days prepare and serve upon his adversary, and submit to the judge such findings, and may, within two days thereafter, briefly suggest in writing to the judge why he desires findings upon the points included within the findings prepared by himself, or why he objects to findings upon the points included within the findings prepared by his adversary. The judge may adopt, modify or reject the findings so submitted. If, at the time of the submission of the cause, the judge does not direct the preparation of findings, or those prepared are rejected, then he must himself prepare the findings.

§ 270. MAKING UP JUDGMENT.] On a judgment for the plaintiff upon an issue of law he may proceed in the manner prescribed by the first two subdivisions of section 229, upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered as in that section provided.

ARTICLE VII.—OF REFERENCES AND TRIALS BY REFEREES.

§ 271. REFERENCE BY CONSENT] A reference may be ordered upon the agreement of the parties, filed with the clerk, or entered in the minutes:

1. To hear and determine any or all of the issues of fact in an action or proceeding, and to report a finding upon which judgment may be entered by the court.

2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

§ 272. WITHOUT CONSENT.] Where the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in all cases formerly cognizable in chancery in which reference might be made.

§ 273. TO WHOM ORDERED.] A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge must appoint one or more referees, not exceeding three, who reside in the county or subdivision in which the action or proceeding is triable, and against whom there is no legal objection.

§ 274. CHALLENGES TO REFEREE.] Either party may object to the appointment of any person as referee for the same cause for which challenges for cause may be taken to a petit juror in the trial of a civil action.

§ 275. COURT OR JUDGE HEARS.] The objections taken to the appointment of any person as referee must be heard and disposed of by the court or judge thereof. Affidavits may be read and witnesses examined as to such objections.

§ 276. REPORT BY REFEREES.] The referees must report their findings in writing to the court within twenty days after the testimony is closed; but the time may be extended by consent of the parties, or by order of the court or judge.

§ 277. FINDING ONLY OF FACTS—SPECIAL VERDICT.] The reference in all cases shall be to find the facts, and the finding reported has the effect of a special verdict, and may be excepted to and set aside in like manner.

§ 278. OATH OF REFEREES.] The referees, before proceeding to hear any testimony must be sworn, to well and truly hear and determine the facts referred to them, and true findings render according to the evidence, and they have power to administer oaths to all witnesses produced before them.

ARTICLE VIII.—EXCEPTIONS.

§ 279. HOW STATED.] No particular form of exception is required. The objection must be stated, with so much of the evidence or other matter, as is necessary to explain it, and no more. But when the exception is to the verdict or decision, upon the grounds of the insufficiency of the evidence to sustain it, the objection must specify the particulars in which such evidence is alleged to be insufficient.

§ 280. SETTLED AT TIME OR AFTER.] A bill containing the exceptions to any ruling may be presented to the judge at the time the ruling is made, or the exception may be entered on the judge's minutes, and afterwards settled. The bill must be conformable to the truth, or be at the time corrected until it be so, and signed by the judge and filed with the clerk.

§ 281. SETTLED IN TEN DAYS ON THREE DAYS' NOTICE.] If a bill is not presented at the time of the ruling, a bill containing the exceptions, or any of them, relating to any ruling had up to the time of the entry of judgment, may upon three days' notice to the adverse party, at any time after such ruling is made, and within ten days after the entry of judgment, or such other time as may be fixed by the court, be presented to the judge and settled.

§ 282. EXCEPTIONS AFTER JUDGMENT.] Exceptions to any decision made after judgment may be presented to the judge at the time of such decision, and may be settled or noted as provided in section 280, and a bill thereof may be presented and settled afterwards, as provided in section 281, and within like periods after entry of the order, upon appeal from which such decision is reviewable.

§ 283. APPLICATION TO SUPREME COURT.] If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court to prove the same. The application may be made in the mode and manner, and under such regulations as that court may prescribe, and the bill, when proven, must be certified by a justice thereof as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause.

§ 284. IN CASE OF VACANCY.] If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in the preceding section, apply to the supreme court to prove the same.

ARTICLE IX.—OF NEW TRIALS.

§ 285. DEFINITION.] A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury or court, or by referees.

§ 286. CAUSES FOR—WHO APPLIES.] The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

5. Excessive damages, appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7. Error in law, occurring at the trial and excepted to by the party making the application.

§ 287. UPON AFFIDAVITS OR RECORD.] When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the preceding section, it must be made upon affidavits; for any other cause it may be made, at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case, prepared as hereinafter provided.

§ 288. NOTICE—CONTENTS—WHEN HEARD.] The party intending to move for a new trial must serve upon the adverse party a notice of his intention, designating therein generally the grounds upon which the motion will be made. Such motion must be made and determined during the term at which the cause was tried, unless for good cause further time be given by the court; and, except in cases of newly discovered evidence, the application must be made within three days after the verdict or decision is rendered. Motions for new trial on the ground of newly discovered evidence may be made at the term at which the cause is tried or at the next succeeding term.

§ 289. VERDICT VACATED BY COURT.] The verdict of a jury may also be vacated, and a new trial granted by the court in which the action is pending, on its own motion, without the application of either of the parties, when there has been such plain disregard by the jury of the instructions of the court, or the evidence in the case, as to satisfy the court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice.

§ 290. HEARING AT CHAMBERS OR IN OTHER COURT.] When the action is tried by a district judge in his district, out of the county of his residence, the motion for a new trial may, upon the consent of parties, be brought to a hearing before such judge at chambers, or in open court, in the county of his residence, or in any other county.

ARTICLE X.—MANNER OF GIVING, ENTERING, AND SATISFYING JUDGMENTS.

§ 291. ENTERED BY CLERK ON ORDER.] Judgment upon an issue of law, or fact, or upon confession, or upon failure to answer, may be entered by the clerk upon the order of the court or the judge thereof.

§ 292. AGAINST WHOM—COUNTER CLAIM.] 1. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and the court may determine the ultimate rights of the parties on each side as between themselves.

2. If a counter claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant must be given for the excess; and the court may grant to the defendant any affirmative relief to which he may be entitled.

3. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper.

4. The court may also dismiss the complaint, with costs in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. In an action brought by or against a married woman, judgment may be given against her as well for costs as for damages, or both for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate and not otherwise.

§ 293. RELIEF LIMITED BY COMPLAINT.] The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him relief consistent with the case made by the complaint and embraced within the issue.

§ 294. DEATH BEFORE JUDGMENT.] If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

§ 295. TO RECOVER PERSONALTY.] In an action to recover the possession of personal property, the judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same.

§ 296. PUTTING IN POSSESSION.] Every judgment that contains a direction for the sale of any specific real property may also direct the delivery of the possession of such property to the purchaser; and the officer receiving the execution or order of sale, may enforce such judgment by putting the purchaser in possession of the premises, in like manner and with like authority, as if special execution had been directed to him for that purpose.

§ 297. JUDGMENT BOOK.] The clerk shall keep, among the records of the court, a book, for the entry of the judgments, to be called the "judgment book."

§ 298. ENTRIES.] The judgment shall be entered in the judgment book, and shall specify clearly the relief granted, or other determination of the action.

§ 299. JUDGMENT ROLL—CONTENTS.] Unless the party or his attorney shall furnish a judgment-roll, the clerk, immediately after entering the judgment, shall attach together, and file the following papers, which shall constitute the judgment-roll:

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders or papers in any way involving the merits and necessarily affecting the judgment.

§ 300. DOCKETING IN OTHER COUNTIES—SECURED ON APPEAL—EFFECT.] On filing a judgment-roll, upon a judgment directing in whole or in part the payment of money, it may be docketed with the clerk of the court in which it was rendered, in a book to be known as the judgment docket, and in any other county or subdivision, upon filing with the clerk of the district court for said county or subdivision, a transcript of the original docket; and it shall be a lien on all the real property, except the homestead, in the county or subdivision where the same is so docketed, of every person against whom any such judgment shall be rendered, and which he may have at the time of the docketing thereof in the county or subdivision in which such real property is situated, or which he shall acquire at any time thereafter, for ten years from the time of docketing the same in the county or subdivision where it was rendered. But whenever an appeal from any judgment shall be pending, and the undertaking requisite to stay execution on such judgment shall have been given, and the appeal perfected as provided in this code, the court in which such judgment was recovered may, on special motion, after notice to the person owning the judgment, direct the clerk to make an entry on the judgment docket that the same is "secured on appeal," and thereupon it shall cease, during the pendancy of the appeal, to be a lien on the real property of the judgment debtor as against purchasers and mortgagees in good faith.

§ 301. FORM OF JUDGMENT DOCKET.] The clerk shall docket the judgment by entering alphabetically in the judgment docket the names of the judgment debtor or debtors, the names of the party or parties in whose favor the judgment was rendered, the sum recovered or directed to be paid, in figures, the date of the judgment, the year, day, hour and minute when the judgment roll or transcript was filed, the year, day, hour, and minute when the judgment was docketed in his office, and the page in the judgment book where the same is entered; the name of the court in which the judgment was rendered; the name of the attorney or attorneys for the party recovering the judgment, and, if there are two or more judgment debtors, such entries must be repeated under the initial letter of the surname of each.

§ 302. ASSIGNMENT OF JUDGMENT—FORMALITIES—ENTRIES.] Every clerk of the district court, upon the presentation to him of an assignment of any judgment rendered or docketed therein, signed by the party in whose favor the judgment is rendered, his executor or administrator, and acknowledged in the manner prescribed by law for the acknowledgment of deeds, must immediately enter the same in the judgment book, and must note the fact of such assignment, the date thereof, and the name of the assignee, in the margin of the entry of such judgment, in such judgment book, and also upon the docket of such judgment. And the clerk of the district court of any other county or subdivision where such judgment is docketed, must note the fact of such assignment, the date thereof, and the name of the assignee, upon the presentation to and filing with him, a certified copy of the original judgment docket with the said facts of such assignment noted thereon.

§ 303. CANCELLATION AND DISCHARGE.] Any judgment rendered or docketed in the district courts of the territory, may be cancelled and discharged by the clerk thereof:

1. Upon the filing with him of an acknowledgment of the satisfaction thereof, signed by the party in whose favor the judgment was obtained, his attorney of record, his executor, administrator or assignee, and duly acknowledged in the manner required to admit a deed of real property to record.

2. Upon the return of any execution, issued upon such judgment, wholly satisfied, or the presentation of a satisfaction piece duly executed and acknowledged as hereinbefore provided, to the clerk of any district court, he must immediately note upon the judgment docket and in the margin of the judgment book where such judgment is entered, the date of such cancellation and the manner thereof, by satisfaction piece filed, execution returned satisfied, or otherwise.

3. And any partial satisfaction of the judgment may be made and noted upon the records in like manner; and thereupon all judgments and liens thereby created, must be taken and deemed to be canceled and discharged, to the extent of the entries so made upon the judgment docket, and no more.

4. And the clerk of any other district court, or the district court of any other county or subdivision, wherein a transcript of any such judgment docket shall have been filed and judgment docketed accordingly, must cancel the same in like manner upon his judgment docket, upon the filing in his office of a certified copy of the original judgment docket entry duly canceled as hereinbefore provided.

§ 304. JUSTICE'S JUDGMENT DOCKETED BY CLERK—LIEN.] A justice of the peace, on the demand of a party in whose favor he shall have rendered a judgment, must give a certified transcript thereof which may be filed in the office of the clerk of the district court of the county or subdivision, in which the judgment was rendered, and such clerk must thereupon enter such judgment in the judgment book, and upon the judgment docket; and, from the time of the docketing thereof, it becomes a judgment of such district court and a lien upon real property, and a certified transcript of the docket of such judgment may be filed, and the judgment docketed accordingly, in any other county or subdivision, with the like effect in every respect as if the judgment had been rendered in the district court where such judgment is filed.

§ 305. SET-OFF OF JUDGMENTS] Mutual final judgments may be set off, pro tanto, the one against the other, by the court upon proper application and notice.

CHAPTER XIII.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

THE EXECUTION AND LEVY.

§ 306. WITHIN FIVE YEARS.] The party in whose favor judgment has heretofore been, or shall hereafter be given, and, in case of his death, his personal representatives, duly appointed, may, at any time within five years after the entry of judgment, proceed to enforce the same by writ of execution as provided in this chapter.

§ 307. AFTER FIVE YEARS BY LEAVE.] After the lapse of five years from the entry of judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due. But the leave shall not be necessary when execution has been issued on the judgment within the five years, and returned unsatisfied in whole or in part.

§ 308. FOR DELIVERY OR SALE.] Where a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this chapter. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material points thereof, and directing the proper officer to execute the judgment, by making the sale and applying the funds in conformity therewith. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for contempt.

§ 309. KINDS OF EXECUTION.] There shall be three kinds of execution; one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

§ 310. AGAINST PROPERTY—TO DIFFERENT COUNTIES.] When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of such county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. An execution may issue against a married woman, and it must direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

§ 311. AGAINST PERSON—WHEN.] If the action be one in which the defendant might have been arrested, as provided in section 149 and section 151, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court, after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as in this code provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by section 149.

§ 312. ISSUE AND CONTENTS OF EXECUTION.] The writ of execution must be issued in the name of the territory of Dakota, attested in the name of the judge, sealed with the seal of the court, and subscribed by the clerk, and directed to the sheriff, or to the coroner when the sheriff is a party or interested; and it must intelligibly refer to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of judgment, if it be for money, and the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. If it be against the property of the judgment debtor, to satisfy the judgment with interest and accruing costs out of the personal property of such debtor; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter.

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, or tenants of real property, or trustees, to satisfy the judgment out of such property.

3. If it be against the person of the judgment debtor, to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment, or be discharged according to law.

4. If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents or profits recovered by the same judgment, out of the personal property of the party against whom it was ren-

dered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and shall in that respect be deemed an execution against property.

§ 313. TIME OF RETURN.] The execution shall be returnable within sixty days, after its receipt by the officer, to the clerk with whom the record of judgment is filed.

§ 314. WHAT PROPERTY TAKEN.] All goods, chattels, moneys and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in real or personal property, and all other property not capable of manual delivery, shall be liable to be taken on execution and sold as hereinafter provided.

§ 315. OFFICER'S PROCEEDINGS ON.] When an execution is delivered to any officer, he must indorse thereon the day and hour when he received it, and must proceed to execute the same with diligence; and, if executed, an exact description of the property at length, with the date of the levy, sale, or other act done by virtue thereof, must be indorsed upon or appended to the execution; and if the writ was not executed, or executed in part only, the reason in such case must be stated in the return. If no personal property be found, an indorsement to that effect must be made on the writ, before levy is made on real property.

§ 316. LEVY ANY SALE.] The officer must execute the writ by levying on the property of the judgment debtor, collecting the things in action by suit in his own name, if necessary, or by selling the same, selling the other property, and paying to the plaintiff the proceeds, or so much thereof as will satisfy the execution.

§ 317. AMOUNT LEVIED—LIEN ON PERSONALTY.] The officer must in all cases select such property, and in such quantities, as will be likely to bring the exact amount required to be raised, as nearly as practicable, and having made one levy, may, at any time thereafter, make other levies if he deem it necessary. But no writ of execution shall be a lien on personal property before the actual levy thereof.

§ 318. THINGS IN ACTION.] Judgments, bank bills, and other things in action, may be sold, or appropriated, as provided in the next following section, and assignment thereof by the officer shall have the same effect as if made by the defendant.

§ 319. PROPERTY NOT TO BE SOLD.] Money levied may be appropriated without being advertised or sold. The same may be done with bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value.

§ 320. PAYMENT TO SHERIFF.] After the rendition of the judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge therefor.

§ 321. CLAIM BY THIRD PERSON—SHERIFF'S JURY.] If the property levied on be claimed by a third person as his property, the sheriff may summon from his county six persons qualified as jurors. between the parties, to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the sheriff; and if their verdict be in favor of the claimant the sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, and the witnesses must be paid by the claimant, if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the sheriff, before the trial, the amount of his fees, and the fees of the jury, and the sheriff must return to the prevailing party the amount so deposited by him.

EXEMPTIONS.

§ 322. EXEMPT FROM ALL PROCESS.] Except as hereinafter provided, the property mentioned under this heading, is exempt from attachment or mesne process, and from levy and sale on execution, and from any other final process issued from any court.

§ 323. ABSOLUTE EXEMPTIONS.] The property mentioned in this section is absolutely exempt from all such process, levy or sale:

1. All family pictures.

2. A pew or other sitting in any house of worship.

3. A lot or lots in any burial ground.

4. The family bible, and all school books used by the family, and all other books used as a part of the family library not exceeding in value one hundred dollars.

5. All wearing apparel and clothing of the debtor, and his family.

6. The provisions for the debtor, and his family, necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.

7. The homestead, as created, defined and limited by law.

§ 324. ADDITIONAL EXEMPTIONS.] In addition to the property mentioned in the preceding section, the debtor may, by himself or his agent, select from all other of his personal property, not absolutely exempt, goods, chattels, merchandise, money or other personal property, not to exceed in the aggregate fifteen hundred dollars in value, which is also exempt, and must be chosen and appraised as hereinafter provided.

§ 325. SPECIFIC ALTERNATIVE EXEMPTIONS.] Instead of the exemption granted in the preceding section the debtor may select and choose the following property, which shall then be exempt, namely:

1. All miscellaneous books and musicial instruments for the use of the family, not exceeding five hundred dollars in value.

2. All household and kitchen furniture, including beds, bedsteads and bedding, used by the debtor, and his family, not exceeding five hundred dollars in value; and in case the debtor shall own more than five hundred dollars worth of such property, he must select therefrom such articles to the value of five hundred dollars, leaving the remainder subject to legal process.

3. Three cows, ten swine, one yoke of cattle and two horses or mules or two yoke of cattle, or two span of horses or mules, one hundred sheep and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing, or both, as the debtor may choose; also one wagon, one sleigh, two plows, one harrow, and farming utensils, including tackle for teams, not exceeding three hundred dollars in value.

4. The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and, in addition thereto, stock in trade not exceeding two hundred dollars in value. The library and instruments of any professional person, not exceeding six hundred dollars in value.

§ 326. THOSE BY NUMBER CHOSEN; BY VALUE APPRAISED.] All the articles enumerated in the preceding section which are exempt by limitation of number, must be chosen by the debtor, his agent or attorney; so, also, all property exempt by limitation of value must be determined by an appraisement made under the direction of the sheriff or other officer.

§ 327. APPRAISERS SELECTED.] To make the appraisement, the debtor, his agent or attorney must select one person, and the creditor, his agent or attorney, another person, and these two, so selected, a third person, who must all be disinterested citizens of the county not related to either party nearer than the fourth degree. If the two fail to agree upon the third person, the sheriff or other officer must select the third person; and, in like manner, if either the debtor or creditor fail or refuse, upon notice, to select a person to act as one of the appraisers, the sheriff or other officer must select one for them.

§ 328. OATH AND DUTIES OF APPRAISERS] The three appraisers so selected, must take and subscribe an oath before the sheriff or other officer, to be attached to the inventory of appraisement, that they will truly, honestly, and impartially appraise the property of the debtor. The property must be appraised at the usual price of such articles at sheriff's sales, as near as can be determined, and must be set down in an inventory by articles or by lots when definitely descriptive, with the value opposite. From the appraisement so made, if over the limitation in value, the debtor, his agent or attorney, may select the amount in value of fifteen hundred dollars, or the alternative amounts in value, of each class, leaving the remainder, if any, in either case, subject to legal process.

§ 329. WIFE, OR CHILD OVER SIXTEEN, MAY ACT.] If, in any case, the debtor neglect, or refuse, or for any cause, fail to claim the whole or any of the aforesaid exemptions, his wife is entitled to make such claim or demand, and to select and choose the property, to select and designate one of the appraisers, and to do all other acts necessary in the premises, the same and with like effect as the debtor himself might do; and if she neglect, refuse, or for any cause fail so to do, in whole or in part, then one of their children, of sixteen years of age and upwards, being a member of the family, may do so in like manner and with like effect.

§ 330. SHERIFF TO RETURN EXEMPTIONS.] The sheriff or other officer having any process of levy or sale, must make return with his writ or warrant, of any inventory and appraisement of any such exempted or other personal property.

§ 331. NOTICE BY SHERIFF TO DEBTOR—HIS CLAIM.] In all cases of a levy upon personal property by a sheriff, constable, or other officer, he must give notice thereof to the debtor, his attorney, agent, or wife, or failing conveniently to find either, to such child as is described in section 329; and the debtor, or such other person for him, must claim or demand the benefit of these exemptions within three days after such notice from the officer; and said notice of levy may be by copy or by reading.

§ 332. LABORER'S OR MECHANIC'S WAGES.] Nothing in this chapter shall be so construed as to exempt any personal property from execution for laborers' or mechanics' wages, except that absolutely exempt.

§ 333. PERSONS HAVING NO EXEMPTIONS—PARTNERSHIPS.] Except those made absolute, the exemptions herein provided for must not be construed to apply to the following persons, namely:

1. To a corporation for profit.
2. To a non-resident.
3. To a debtor who is in the act of removing with his family from the territory; or,
4. Who has absconded, taking with him his family.
5. A partnership firm can claim but one exemption of fifteen hundred dollars in value, or the alternative property, when so applicable, instead thereof, out of the partnership property, and not a several exemption for each partner.

§ 334. FOR FINES, PENALTIES AND COSTS—FORFEITURES OF RECOGNIZANCES.] No property, either real or personal, except the homestead and other exemptions made absolute, shall be exempt from levy, seizure and sale, by virtue of any final writ or process issued on a judgment for fines, penalties, or costs of criminal prosecutions; and no property, except the homestead and other exemptions made absolute, and personal property of any kind in addition thereto to the value of five hundred dollars, shall be exempt from levy, seizure or sale, by virtue of any final writ or process issued on a judgment for forfeitures of undertakings and bonds, or of recognizance taken and entered in criminal cases.

SALES.

§ 335. PUBLISHED NOTICE—PERISHABLE PROPERTY.] The officer who levies upon personal property by virtue of an execution, must, before he proceeds to sell the same, cause public notice to be given of the time and place of such sale, for at least ten days before the day of sale. The notice must be given by advertisement, published in some newspaper printed in the county or subdivision, or, in case no newspaper be printed therein, by posting up advertisements in five public places in the county. Perishable property may be sold by order of the court or a judge thereof, prescribing such notice, time, and manner of sale as may be reasonable, considering the character and condition of the property.

§ 336. REAL PROPERTY.] Before any real property or interest therein, taken in execution, shall be sold, the officer making such sale must cause public notice of the time and place thereof to be given by advertisement published in some newspaper printed in the county or subdivision where the real property to be sold is situated, once a week for at least thirty days, and in case there be no newspaper printed therein, then the officer making such sale must cause such advertisement to be made in some newspaper having a general circulation in such county or subdivision, and in addition thereto must post a copy of such advertisement on the outer door of the court house or building wherein the district court of the county or subdivision was last held, and in five other public places in the county. All sales made without notice as herein provided must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

§ 337. SALE AT COURT HOUSE DOOR.] All sales of real property, or any interest therein, under execution, must be held at the court house, if there be one in the county or subdivision in which such real property is situated, and if there be no court house, then at the door of the house in which the district court was last held, and if there be no court house, and no district court have been held in the county or subdivision, then at such place, within the county or subdivision, as the sheriff shall designate in his notice of sale.

§ 338. MANNER AND TIME OF SALE.] All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and four in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. No sheriff or other officer, nor his deputy, holding the execution or making the sale of property, either personal or real, can become a purchaser, or be interested, directly or indirectly, in any purchase, at such sale, and every purchase so made shall be considered fraudulent and void. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price: and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff or other officer must follow such directions.

§ 339. POSTPONEMENTS.] When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, the sheriff may postpone the sale for not less than three days, without being required to give any further notice thereof; but he shall not make more than two such postponements, and such postponement must be publicly announced when and where the sale should have taken place.

§ 340. OVERPLUS.] When the property sells for more than the amount required to be collected, the overplus must be paid to the defendant, unless the officer have another execution in his hands on which said overplus may be rightfully applied.

§ 341. NEW SALE—ADDITIONAL LEVY—ALIAS WRIT.] When property is unsold for want of bidders, the levy still holds good; and if there be sufficient time it may again be advertised or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added, that if such property do not produce a sum sufficient to satisfy such execution, the officer must proceed to make an additional levy, on which he shall proceed as on other executions, or the plaintiff may, in writing filed with the clerk, abandon such levy upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued.

§ 342. PURCHASER'S RIGHT—SHERIFF'S CERTIFICATE.] Upon a sale of real property the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this chapter. The officer must give to the purchaser a certificate of sale, containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. When subject to redemption it must be so stated.

Such certificate must be executed by the officer and acknowledged or proved, as is or may be required by law for deeds of real property, and may be recorded in the office of the register of deeds of the county wherein the real property is situated; and the same, or a certified copy thereof, certified by such register, shall be taken and deemed evidence of the facts therein recited and contained.

CONFIRMATION.

§ 343. PROCEEDINGS UPON CONFIRMATION.] If the court, upon the return of any writ of execution, for the satisfaction of which any real property or interest therein has been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity to the provisions of this chapter, the court must make an order confirming the sale and directing the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such real property, or interest therein, at the expiration of one year from the day of sale unless the same be redeemed as herein provided. And the officer, after making such sale, may retain the purchase money in his hands, until the court shall have examined his proceedings, as aforesaid, when he must pay the same to the person entitled thereto by order of the court.

REDEMPTION.

§ 344. WHO MAY REDEEM—REDEMPTIONER.] Property sold subject to redemption, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest.
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

§ 345. PAYMENT ON AND PERIOD FOR.] The judgment debtor or redemptioner may redeem the property from the purchaser within one year after the sale, on paying the purchaser the amount of his purchase with twelve per cent. interest thereon, together with the amount of any assessment of taxes which the purchaser may have paid thereon after the purchase, and interest at the same rate on such amount; and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

§ 346. SUCCESSIVE REDEMPTIONS—PAYMENTS.] If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with the like interest thereon in addition as provided by the preceding section, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment on which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with interest at the same rate as provided for the first redemption in section 345, in addition, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest.

§ 347. RECORD OF REDEMPTION.] Written notice of redemption must be given to the sheriff, and a duplicate filed with the register of deeds of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff, and filed with the register of deeds; and if such notice be not filed, the property may be redeemed without paying such tax, assessment or lien.

§ 348. PERIOD FOR DEED—DEBTOR'S RIGHT.] If no redemption be made within one year after the sale, the purchaser or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property.

§ 349. DEBTOR'S REDEMPTION.] If the debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the register of deeds of the county in which the property is situated, and the register of deeds must note the record thereof in the margin of the record of the certificate of sale.

§ 350. PAYMENTS TO WHOM.] The payments mentioned in the last five sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale.

§ 351. REQUISITE PAPERS.] A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the district court of the county where the judgment is docketed, or, if he redeem upon a mortgage or other lien, a note of the record thereof certified by the register of deeds.

2. A copy of the assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto.

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

§ 352. USE OF PREMISES—WASTE.] Until the expiration of the time for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

§ 353. RENTS—ACCOUNT FOR.] The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold, preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If the purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in the district court of the county where the real property is situated to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

THE SHERIFF'S DEED.

§ 354. EFFECT OF—CONTENTS.] Upon the expiration of the period for redemption, the proper officer must make the purchaser, or the party entitled thereto, a deed of the real property sold. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein until the contrary is proved, and shall vest in the purchaser, or other party as aforesaid, as good and as perfect title in the premises therein mentioned and described, as was vested in the debtor at or after the time when such real property became liable to the satisfaction of the judgment. And such deed or conveyance, to be made by the sheriff, or other officer, must recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of rendition of such judgment, by virtue whereof the said real property was sold as aforesaid, and must be executed, acknowledged, or proved, and recorded, as is or may be provided by law, to perfect the conveyance of real property in other cases.

§ 355. SUCCESSORS, SAME POWER.] If the term of service of the sheriff, or other officer, who has made, or shall hereafter make sale of any real property, shall expire; or, if the sheriff or other officer shall be absent, or be rendered unable, by death, or otherwise, to make a deed or conveyance of the same, any succeeding sheriff or other officer may execute to the purchaser or person entitled thereto, or his legal representatives, a deed of conveyance of said real property so sold; and such deed shall be as good and valid in law, and have the same effect, as if the sheriff or other officer, who made the sale, had executed the same.

GENERAL PROVISIONS.

§ 356. PRINTER'S FEES IN ADVANCE.] The officer who levies upon personal property or real property, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper, until the party for whose benefit such execution is issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice. Before any officer shall be excused from publishing the notice, as aforesaid, he must demand of the party for whose benefit the execution was issued, his agent or attorney, provided either of them reside in the county, the amount of money for such fees.

§ 357. EFFECT OF REVERSAL] If any judgment, in satisfaction of which any real property be sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser; but in such case, restitution must be made by the judgment creditor, of the money for which such real property was sold, with lawful interest thereon from the day of sale.

§ 358. PRINCIPAL AND SURETY.] In all cases where judgment is rendered upon any instrument in writing, in which two or more persons are severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail for his co-defendant, the court must, in entering judgment thereon, state which of the defendants is principal debtor, and which are sureties or bail. And execution issued on such judgment must command the sheriff or other officer to cause the money to be made of the personal property, and real property of the principal debtor, but, for want of sufficient property of the principal debtor to make the same, to cause the same to be made of the personal and real property of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, must be exhausted before any of the property of the surety or bail shall be taken in execution.

§ 359. AMERCEMENT OF SHERIFF.] If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or, to sell any personal or real property; or, to return any writ of execution to the proper court, on or before the return day; or, on demand, to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same except as otherwise provided; or, on demand made by the defendant, his agent or attorney of record, to pay all overplus received from any sale; such sheriff or other officer shall, on motion in court and two days' notice thereof in writing, be amerced in the amount of said debt, damages and costs, with ten per centum thereon to and for the use of said plaintiff or defendant, as the case may be.

§ 360. OF CLERK—SAME.] If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

§ 361. MEASURE OF SAME.] When the cause of amercement is for refusing to pay over money collected as aforesoid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

§ 362. RETURN OF WRIT BY MAIL.] When execution shall be issued in any county, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution by mail, to the clerk who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the said clerk within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

§ 363. PROCEEDINGS AGAINST OFFICER.] No sheriff shall forward, by mail any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to by the first day of the term at which such motion shall be made. All amercements so procured shall be entered on the record of the court, and shall have the same force and effect as a judgment.

§ 364. SURETY MADE PARTY.] Each and every surety of any sheriff or other officer may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action to be commenced and prosecuted as in other cases; but the property, personal or real, of any such surety, shall not be liable to be taken on execution when sufficient property of the sheriff, or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment or other proceeding, at his election.

§ 365. OFFICERS REIMBURSEMENT.] In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he must be permitted to take out executions and collect the amount of said judgment in the name of the original plaintiff, for his own use.

CHAPTER XIV.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

§ 366. DISCOVERY—DEBTOR'S APPEARANCE—EXAMINATION—ARREST OF DEBTOR—ANSWERS NOT EXCUSED.] 1. When an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or, if he do not reside in the territory, to the sheriff of the county where a judgment roll, or a transcript of a justice's judgment for twenty-five dollars or upwards, exclusive of costs, is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return made, is entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, at a time and place specified in the order, within the county to which the execution was issued.

2. After the issuing of an execution against property, and upon proof by affidavit, of a party or otherwise, to the satisfaction of the court, or a judge thereof; that any judgment debtor, residing in the district where such judge resides, has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment, as are provided upon the return of an execution.

3. On an examination under this section, either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

4. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon proof by affidavit or otherwise to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such judge. Upon being brought before the judge, he may be examined on oath, and if it then appears that there is danger of the debtor leaving the territory, and that he has property which he has unjustly refused to apply to such judgment, ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the judge as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the judge, as for contempt.

5. No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of the commission of a fraud; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

§ 367. DEBTOR'S DEBTOR.] After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

§ 368. EXAMINATION OF SAME.] After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party to the action in such manner as may seem to him proper. The proceedings mentioned in this section, and in section 366, may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions now pending, and not actually terminated by any final judgment or decree.

§ 369. WITNESSES.] Witnesses may be required to appear and testify on any proceeding under this chapter, in the same manner as upon the trial of an issue.

§ 370. REFEREE—ANSWERS ON OATH.] The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge; if before a referee, the examination shall be taken by the referee, and certified to the judge. All examinations and answers before a judge or referee, under this chapter, shall be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

§ 371. PROPERTY APPLIED—WAGES EXEMPT.] The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within sixty days next preceding the order, cannot be so applied when it is made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

§ 372. RECEIVER—RESTRAINT OF PROPERTY TRANSFERS—RECORD.] The judge may also, by order, appoint a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if the appointment was made by the court, according to section 219. But before the appointment of such receiver, the judge shall ascertain, if practicable, by the oath of the party, or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution, and any interference therewith. Whenever the judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the clerk of the court where the judgment roll in the action or transcript from justice's judgment, upon which the proceedings are taken, is filed; and the said clerk shall record the order in a book to be kept for that purpose in his office, to be called "Book of orders appointing receivers of judgment debtors," and shall note the time of filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. But before he shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded in the office of the register of deeds of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the register of deeds of the county in which such judgment debtor resides.

§ 373. ADVERSE CLAIMS—PROCEEDINGS ON.] If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the the debt, such interest or debt shall be recoverable only in an action against such person or corporation by the receiver; but the judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; but such order may be modified or dissolved by the judge granting the same, at any time, on such security as he shall direct.

§ 374. REFEREE—APPOINTMENT] The judge may, in his discretion, order a reference to a referee agreed upon by the parties, or appointed by him, to report the evidence or the facts, and, may in his discretion, appoint such referee in the first order, or at any time.

§ 375. WITNESS FEES—DISBURSEMENTS.] The judge may allow to the judgment creditor, or any party so examined, whether a party to the action or not, witness' fees and disbursements.

§ 376. DISOBEDIENCE—CONTEMPT.] If any person, party, or witness, disobey an order of the judge or referee, duly served, such person, party, or witness, may be punished by the judge as for a contempt. And in all cases of commitment under this chapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the court or judge committing him, or the court in which the judgment was rendered, on such terms as may be just.

CHAPTER XV.

OF THE COSTS AND DISBURSEMENTS IN CIVIL ACTIONS.

§ 377. FEES BY AGREEMENT.] The amount of fees of attorneys, solicitors and counsel, in civil and criminal actions must be left to the agreement, express or implied, of the parties.

§ 378. SAME IN WRITTEN INSTRUMENT.] When by the terms of any written instrument, it appears that the debtor has made a written contract for the allowance of attorneys fees, the same must be allowed by the court, in conformity to the instrument, and must form a part of the judgment and be incorporated therein.

§ 379. COSTS TAXED IN JUDGMENT.] In all actions and special proceedings, the clerk must tax as a part of the judgment, in favor of the prevailing party, the allowance of his witnesses, the jury, officers' and printers' fees, the compensation of referees, and the necessary expenses of taking depositions, and procuring necessary evidence.

§ 380. APPEAL FROM SAME.] Any person aggrieved by the taxation of costs may appeal therefrom to the court or a judge thereof.

§ 381. COSTS LIMITED BY DAMAGES—SEVERAL ACTIONS.] In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages And in an action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages, unless he recovers also property, the value of which, with the damages, amounts to fifty dollars, or the possession of property be adjudged to him, the value of which, with the damages, amounts to fifty dollars; such value must be determined by the jury, court, or referee, by whom the action is tried. When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange, or other instrument in writing, or in any other case, for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which must be at his election: *Provided*, That the party or parties proceeded against in such action or actions, shall at the time of the commencement of the previous action or actions, have been openly within this territory, and not secreted.

§ 382. COSTS TO CERTAIN DEFENDANTS.] In all actions where there are several defendants, not united in interests, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor.

§ 383. DISCRETION OF COURT.] In the following cases the costs of an appeal must be in the discretion of the court:

1. When a new trial shall be ordered.
2. When a judgment shall be affirmed in part and reversed in part.

§ 384. AGAINST ATTEMPTING PARTY.] When an action is dismissed from any court for want of jurisdiction, or because it has not been regularly transferred from an inferior to a superior court, the costs must be adjudged against the party attempting to institute or bring up the action.

§ 385. ON APPEALS.] Costs must be allowed to the prevailing party in judgments rendered on appeal from justices' courts, in all cases, including his costs taxed in the court below.

§ 386. INTEREST.] When the judgment is for the recovery of money, interest from the time of the verdict or report, until judgment be finally entered, must be computed by the clerk and added to the costs of the party entitled thereto.

§ 387. NOTICE OF TAXING COSTS—VERIFICATION—ITEMS.] The clerk must insert in the entry of judgment, on the application of the prevailing party, upon five days' notice to the other, except when the attorneys reside in the same city, village or town, and then upon two days' notice, the sum of the allowances for costs as provided by this code. The costs must be stated in detail and verified by affidavit of the party or his attorney, stating in substance that the items of costs have been, or will necessarily be, incurred in the action or proceeding. A copy of the items of the costs and affidavit must be served with a notice of adjustment. Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action, or in any special proceeding, the same shall be adjusted by the judge before whom the same be heard, or the court before which the same may be decided or pending, or in such other manner as the judge or court may direct.

§ 388. REFEREES FEES.] The fees of referees shall be three dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation.

§ 389. COSTS OF POSTPONEMENT.] When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement, may be imposed, in the discretion of the court or referee, as a condition of granting the same.

§ 390. OF INFANT PLAINTIFF BY GUARDIAN.] When costs are adjudged against an infant plaintiff, the guardian, by whom he appeared in the action, must be responsible therefor, and payment thereof may be enforced by attachment.

§ 391. OF TRUSTEE FROM TRUST FUNDS.] In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in an action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be chargeable only upon, or collected of, the estate, fund, or party, represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.

§ 392. AGAINST TERRITORY—EXCEPTION.] In all civil actions, prosecuted in the name of the territory, by an officer duly authorized for that purpose, the territory shall be liable for the costs in the same cases and to the same extent as private parties. If a private person be joined with the territory as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the territory until after execution be issued therefor against such private party and returned unsatisfied.

§ 393. TO PARTY IN INTEREST.] In an action prosecuted in the name of the territory, for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the party plaintiff shall be charged against the party for whose benefit the action was prosecuted, and not against the territory.

§ 394. COSTS TAXED TO ASSIGNEE.] In actions in which the cause of action shall, by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs in the same manner as if he were a party, and payment thereof may be enforced by attachment.

§ 395. ON CHANGE OF VENUE.] Whenever a change of venue is granted in any case pending in the district courts, all the costs and fees paid by the county to which the case is ordered for trial shall be charged to the county from which such case is sent.

§ 396. ACCOUNT FOR SAME.] The board of county commissioners of the county to which any case is ordered for trial, as provided by this code, must make out and present for payment to the county from which such case is sent, an itemized bill of all the costs and fees of the trial of such case, paid by the county according to law; said bill must be sworn to by the county clerk, and the board of county commissioners receiving such bill or account must examine the same and pay the whole thereof, or so much as is legal, proper and correct.

§ 397. SURETY FOR BY NON RESIDENT.] In cases in which the plaintiff is a non-resident of the territory or a foreign corporation, before commencing such action, the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county or subdivision where the action is to be brought, and must be approved by the clerk. His obligation shall be complete by simply endorsing the summons, or signing his name on the complaint as security for costs.

§ 398. RESPONSIBILITY OF.] He shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtain judgment or not.

§ 399. DISMISSAL.] An action in which security for costs is required by the last section, and has not been given, shall be dismissed on the motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

§ 400. PLAINTIFF BECOMING NON-RESIDENT.] If the plaintiff in an action, after its commencement, become a non-resident of the territory, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections.

§ 401. ADDITIONAL SECURITY.] In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this territory, or is not sufficient, the action may be dismissed, unless in a reasonable time to be fixed by the court, sufficient surety be given by the plaintiff.

§ 402. JUDGMENT AGAINST SURETY.] After final judgment has been rendered in an action, in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs or any part thereof, after ten days' notice of such motion, may enter up judgment in the name of the defendant or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the person entitled to such costs.

CHAPTER XVI.

OF APPEALS IN CIVIL ACTIONS.

§ 403. CHAPTER GOVERNS.] The modes of reviewing a judgment or order in a civil action, shall be those prescribed by this chapter.

§ 404. ORDER WITHOUT NOTICE.] An order made out of court without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it, or may be vacated or modified on notice in the manner in which other motions are made.

§ 405. APPEALS ALLOWED.] Any party aggrieved may appeal in the cases prescribed in section 22 of this code.

§ 406. PARTIES—HOW TERMED.] The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action must not be changed in consequence of the appeal.

§ 407. NOTICE OF APPEAL—AMENDMENT—SERVICE OF NOTICE.] An appeal must be made:

1. By the service of a notice in writing on the adverse party or his attorney, and on the clerk with whom the judgment or order appealed from is entered, stating the appeal from the same, or some specified part thereof.

2. When a party shall, in good faith, give notice of an appeal from a judgment or order, and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings, the court may permit an amendment on such terms as may be just.

3. If service of the notice of appeal upon the attorney for the adverse party cannot, with due diligence, be made within the territory in the manner prescribed by this code, the notice of appeal may be served; and

notice of the subsequent proceedings may be given to him, in such manner as the court or a judge thereof shall direct.

§ 408. TRANSMISSION OF PAPERS.] If the appellant do not, within twenty days after his appeal is perfected, cause a certified copy of the notice of appeal and of the judgment roll, or if the appeal be from an order or any part thereof, a certified copy of such order and the papers upon which the order was granted, to be transmitted to the supreme court by the clerk with whom the notice of appeal is filed, the respondent may cause such certified copy to be transmitted by such clerk to the supreme court, and recover the expenses thereof as costs on such appeal, in case the judgment or order appealed from be in whole or in part affirmed.

§ 409. DISMISSAL UPON FAILURE] If the appellant fail to cause the requisite papers to be transmitted to the supreme court, as required by the preceding section and the rules of the court, the appeal may be dismissed.

§ 410. EFFECT OF.] The dismissal of an appeal is, in effect, an affirmance of the judgment or order appealed from, unless the dismissal be expressly made without prejudice to another appeal.

§ 411. WHAT REVIEWABLE ON APPEAL.] Upon an appeal from a judgment the supreme court may review any verdict, decision, or intermediate order, involving the merits and necessarily affecting the judgment.

§ 412. POWER OF SUPREME COURT.] Upon an appeal from a judgment or order, the supreme court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment so far as such restitution is consistent with any rights of purchasers at sheriff's sale.

§ 413. TIME FOR APPEALS.] The appeal to the supreme court under subdivision 2 of section 22 of this code, must be taken within sixty days after written notice of the order shall have been given to the party appealing; every other appeal allowed must be taken within two years after the judgment shall be perfected by filing the judgment roll.

§ 414. UNDERTAKING REQUIRED.] To render an appeal effectual for any purpose, a written undertaking must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding two hundred and fifty dollars; or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking or deposit may be waived by a written consent on the part of the respondent.

§ 415. STAY OF EXECUTION—ADDITIONAL SECURITY—DEPOSIT.] If an appeal be from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking be executed on the part of the appellant by at least two sureties, to the effect that, if the judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. Whenever it shall be made satisfactorily to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file, and serve a new undertaking as above; and in case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring such new undertaking, the appeal may, on motion to the court, be dismissed with costs. Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking, with surety or sureties, he may, in lieu thereof, deposit with the officer or into court, as the case may require, money to the amount for which such bond or undertaking is to be given. The court in which such action or proceeding is pending may direct what disposition shall be made of such money, pending the action or proceeding. In any case where, by this section, the money is so deposited with an officer, a judge of the court, at special term or at chambers, upon the application of either party, may, before such deposit if made, order it to be deposited in court instead of with such officer; and a deposit made, pursuant to such order, shall be of the same effect as if made with such officer.

§ 416. JUDGMENT TO ASSIGN OR DELIVER DOCUMENTS.] If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal, unless the things required to be assigned or delivered be brought into court, or placed in the custody of such officer or receiver as the court shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court, or judge thereof, shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

§ 417. TO EXECUTE CONVEYANCE.] If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

§ 418. TO SELL AND DELIVER REALTY.] If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the same must not be stayed, unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed, any waste thereon, and that if the judgment be affirmed, or the appeal be dismissed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

§ 419. EFFECT OF PERFECTED APPEAL—SECURITY LIMITED.] Whenever an appeal is perfected, as provided in sections 415, 416, 417, and 418, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action and not effected by the judgment appealed from. And the court below may, in its discretion, dispense with or limit the security required by sections 415, 416 and 418, when the appellant is an executor, administrator, trustee or other person acting in another's right; and may also limit such security to an amount not less than fifty thousand dollars, in the cases mentioned in sections 416, 417 and 418, where it would otherwise, according to those sections, exceed that sum.

§ 420. SERVICE OF UNDERTAKINGS.] The undertakings prescribed by sections 414, 415, 416 and 418 may be in one instrument or several, at the option of the appellant; and a copy, including the names and residence of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit be made as provided in section 414, and notice thereof given.

§ 421. JUSTIFICATION—NOTICE—EXCEPTIONS.] An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties, within ten days after the notice of the appeal; and unless they or other sureties justify before a judge of the court below, as prescribed by sections 165 and 166, within ten days thereafter, the appeal must be disregarded as if no undertaking had been given. The justification must be upon a notice of not less than five days.

§ 422. OTHER CASES—PERISHABLE PROPERTY.] In the cases not provided for in sections 415, 416, 417 and 418, the perfecting of an appeal, by giving the undertaking mentioned in section 414 shall stay proceedings in the court below upon the judgment appealed from, except that where it directs the sale of perishable property, the court below may order the property to be sold, and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

§ 423. FILING.] The undertaking must be filed with the clerk with whom the judgment or order appealed from was entered.

§ 424. SPECIAL AND SUMMARY PROCEEDINGS.] The provisions of this chapter as to the security to be given upon appeals, and as to the stay of proceedings shall apply to appeals taken under subdivision 3 of section 22 of this code.

§ 425. OTHER APPEALS.] In addition to the appeals provided for in this chapter, and section 22 of this code, writs of error shall be allowed on all final decisions of the district courts to the supreme court under such regulations as may be prescribed by the rules or practice of the supreme court.

CHAPTER XVII.

PROCEEDINGS AGAINST JOINT DEBTORS, HEIRS, DEVISEES, LEGATEES, AND TENANTS HOLDING UNDER A JUDGMENT DEBTOR.

§ 426. SUMMONS AFTER JUDGMENT.] When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract, by proceeding as provided in section 105, those who were not originally summoned to answer the complaint, and did not appear in the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.

§ 427. REQUISITES OF SAME.] The summons provided in the preceding section must be subscribed by the judgment creditor or his attorney, must describe the judgment and require the person summoned to show cause within thirty days after the service of the summons; and must be served in like manner as the original summons. It is not necessary to file a new complaint.

§ 428. AFFIDAVIT.] The summons must be accompanied by an affidavit of the person subscribing it, that the judgment has not been satisfied, to his knowledge or information and belief, and must specify the amount due thereon.

§ 429. DEFENSE.] Upon such summons, the party summoned may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; and he may make the same defense which he might have originally made to the action, except the statute of limitations.

§ 430. FURTHER PLEADINGS.] The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply; and the issues may be tried and judgment may be given in the same manner as in an action, and enforced by execution; or the application of the property charged to the payment of the judgment, may be compelled by attachment, if necessary.

§ 431. PLEADINGS VERIFIED.] The answer and reply must be verified in the like cases and manner, and be subject to the same rules, as the answer and reply in an action.

CHAPTER XVIII.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.

§ 432. JUDGMENT OFFERED—EFFECT.] The defendant may at any time before the trial or verdict, serve upon the plaintiff, an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof in writing, within ten days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the court or judge thereof must, thereupon, order judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

§ 433. BY PLAINTIFF TO COUNTER-CLAIM] If the defendant set up a counter-claim in his answer, to an amount greater than the plaintiff's claim, or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing, to allow judgment to be taken against him for the amount specified, or to allow said counter-claim to the amount specified with costs. If the defendant accept the offer, and give notice thereof in writing, within ten days, he may enter judgment as above, for the amount specified, if the offer entitle him to judgment, or the amount specified in said offer shall be allowed him in the trial of the action. If the notice of acceptance is not given, the offer is deemed to be withdrawn, and cannot be given in evidence, and if the defendant fail to recover a more favorable judgment, or to establish his counter-claim for a greater amount than is specified in said offer, he cannot recover costs, but must pay plaintiff's costs from the time of the offer.

§ 434. PROFFER OF FIXED DAMAGES.] In an action arising on contract, the defendant may, with his answer, serve upon the plaintiff an offer in writing, that if he fail in his defense, the damages be assessed at a special sum; and if the plaintiff signify his acceptance thereof in writing, with or before the notice of trial, and on the trial have a verdict, the damages must be assessed accordingly.

§ 435. PLAINTIFF REFUSING—PROOF—COSTS.] If the plaintiff do not accept the offer, he must prove his damages as if it had not been made, and shall not be permitted to give it in evidence. And if the damages in his favor do not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in consequence of any necessary preparations or defense in respect to the question of damages.

CHAPTER XIX.

ADMISSION. OR INSPECTION OF WRITINGS.

§ 436. EXHIBIT AND REFUSAL—COSTS.] Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper, material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission within four days after the request; and if the party exhibiting the paper be afterwards put to costs in order to prove its genuineness, and the same be finally proved or admitted on the trial, such costs must be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal.

§ 437. COPY OF DOCUMENTS—PENALTY.] The court before which an action is pending, or a judge thereof, may, in its or his discretion, and upon due notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any books, papers and documents, in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order be refused, the court may, on motion, exclude the paper from being given in evidence, or punish the party refusing, or both.

CHAPTER XX.

EXAMINATION OF PARTIES.

§ 438. ACTION FOR DISCOVERY.] No action to obtain discovery under oath in aid of the prosecution or defense of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this chapter.

§ 439. ADVERSARY A WITNESS.] A party to an action may be examined as a witness, at the instance of the adverse party, or any of several adverse parties, and for that purpose may be compelled, in the same manner, and subject to the same rules of examination, as any other witness, to testify, either at the trial, or conditionally, or upon commission.

§ 440. EXAMINATION BEFORE TRIAL.] The examination, instead of being had at the trial, as provided in the last section, may be had at any time before the trial, at the option of the party claiming it, before a judge of the court, on a previous notice to the party to be examined, and any other adverse party, of at least five days, unless, for good cause shown, the judge order otherwise. But the party to be examined shall not be compelled to attend in any other county than that of his residence, or where he may be served with a summons for his attendance.

§ 441. ATTENDANCE—EXAMINATION FILED.] The party to be examined, as in the last section provided, may be compelled to attend in the same manner as a witness who is to be examined conditionally; and the examination shall be taken and filed by the judge in like manner, and may be read by either party on the trial.

§ 442. REBUTTAL.] The examination of the party, thus taken, may be rebutted by adverse testimony.

§ 443. REFUSAL TO TESTIFY CONTEMPT.] If a party refuse to attend and testify, as in the last four sections provided, he may be punished as for a contempt, and his complaint, answer or reply, may be stricken out.

§ 444. SAME ON OWN BEHALF.] A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf, subject to the same rules of examination as other witnesses.

§ 445. BENEFICIARY EXAMINED.] A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination, as if he were named as a party.

CHAPTER XXI.

WITNESSES AND EVIDENCE.

§ 446. NOT EXCLUDED EXCEPT—HUSBAND AND WIFE—DECEDENT'S STATEMENT.]

No person offered as a witness in any action or special proceeding, in any court, or before any officer or person having authority to examine witnesses or hear evidence, shall be excluded or excused, by reason of such person's interest in the event of the action or special proceeding; or because such person is a party thereto; or because such person is the husband or wife of a party thereto, or of any person in whose behalf such action or special proceeding is brought, prosecuted, opposed or defended, except as hereinafter provided:

1. A husband cannot be examined for or against his wife without her consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this section does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. In civil actions or proceedings by or against executors, administrators, heirs at law, or next of kin, in which judgment may be rendered, or order entered, for or against them, neither party shall be allowed to testify against the other, as to any transaction whatever with, or statement by, the testator or intestate, unless called to testify thereto by the opposite party.

But if the testimony of a party to the action or proceeding has been taken, and he shall afterwards die, and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, heirs at law, or next of kin, then the other party shall be a competent witness, as to any and all matters to which the testimony so taken relates.

MEANS OF PRODUCING WITNESSES.

§ 447. SUBPOENAS ISSUE BY WHOM.] Clerks of the supreme and district courts, the judges thereof, notaries public, justices of the peace and referees shall, on the application of any person having a cause or any matter pending in court, or before any such officer or tribunal, issue a subpœna for witnesses, inserting all the names required by the applicant in one subpœna, which may be served by any person not interested in the action, or by the sheriff, coroner or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed except when served by an officer.

§ 448. REQUISITES OF.] The subpœna shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence.

§ 449. DEPOSITIONS.] When the attendance of the witness before any officer, authorized to take depositions, is required, the subpœna may be issued by such officer.

§ 450. HOW SERVED.] The subpœna shall be served either by reading or by copy, delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness.

§ 451. WHERE WITNESS NOT REQUIRED TO ATTEND.] A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpœna is served upon him.

§ 452. FEES WITNESS MAY DEMAND.] A witness may demand his traveling fees, and fee for one day's attendance, when the subpœna is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpœna. The fact of such demand and non-payment shall be stated in the return.

§ 453. DISOBEDIENCE CONTEMPT.] Disobedience of a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer, by whom his attendance or testimony is required.

§ 454. ATTACHMENT FOR.] When a witness fails to attend in obedience to a subpœna, except in case of a demand and failure to pay his fees, the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be indorsed on the back of the attachment, and if no such sum is fixed and indorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, as a rule, order him to show cause why an attachment should not issue against him.

§ 455. PUNISHMENT FOR DISOBEDIENCE.] The punishment for the said contempt shall be as follows: When the witness fails to attend, in obedience to the subpœna, except in case of a demand and failure to pay his fees, the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine a witness in a sum not exceeding fifty nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the court, and that imposed by the officer, shall be paid into the common school fund of the county. The witness shall also be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

§ 456. JUDGE MAY DISCHARGE.] A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of the district court, who shall have power to discharge him, if it appear that his imprisonment is illegal.

§ 457. REQUISITES OF WRIT AND COMMITMENT.] Every attachment for the arrest or order of commitment to prison of a witness, by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner, or any constable of the county where such witness resides or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailor.

§ 458. EXAMINATION OF PRISONER.] A person confined in any prison in this territory may, by order of any court, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

§ 459. REMAINS IN CUSTODY.] While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

§ 460. WITNESS FREE FROM SUIT IN OTHER COUNTY.] A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning, or attending in obedience to a subpœna.

§ 461. DAILY FEES.] At the commencement of each day after the first day, a witness may demand his fees for that day's attendance, in obedience to a subpœna, and if the same be not paid, he shall not be required to remain.

§ 462. OATH OF WITNESS.] Before testifying, the witness must be sworn to testify as follows:

You do solemnly swear that the evidence you shall give relative to the matter in difference now in hearing, between ...., plaintiff, and ...., defendant, shall be the truth, the whole truth and nothing but the truth. So help you God.

Any witness who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "So help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

MODE OF TAKING THE TESTIMONY OF WITNESSES.

§ 463. THREE MODES.] The testimony of witnesses is taken in three modes:

1. By affidavit.
2. By deposition.
3. By oral examination.

§ 464. AFFIDAVIT.] An affidavit is a written declaration under oath, made without notice to the adverse party.

§ 465. DEPOSITION.] A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories.

§ 466. ORAL EXAMINATION.] An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

AFFIDAVIT.

§ 467. USE OF AFFIDAVIT.] An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law.

§ 468. WHERE AND HOW MADE.] An affidavit may be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way.

DEPOSITIONS.

§ 469. CASES WHEN DEPOSITION USED.] The deposition of any witness may be used only in the following cases:

1. When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial, by change of venue; or is absent therefrom.

2. When, from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead.

3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

§ 470. WHEN TAKEN.] Either party may commence taking testimony by depositions at any time after service upon the defendants.

OFFICERS WHO MAY TAKE THEM.

§ 471. BEFORE WHOM.] Depositions may be taken in this territory before a judge or clerk of the supreme court, or district court, or before a justice of the peace, notary public, or any person empowered by a special commission.

§ 472. OUT OF TERRITORY.] Depositions may be taken out of the territory by a judge, justice, or chancellor, or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from any court of this territory.

§ 473. NOT INTERESTED OR OF KIN.] The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

§ 474. COMMISSION TO TAKE.] Any court of record of this territory, or any judge thereof, is authorized to grant a commission to take depositions within or without the territory. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree.

MANNER OF TAKING AND AUTHENTICATING THEM.

§ 475. NOTICE TO ADVERSE PARTY.] Prior to the taking of any deposition, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

§ 476. SAME BY PUBLICATION.] When the party against whom the deposition is to be read, is absent from, or a non-resident of the territory, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county; and if not, in some newspaper printed in this territory, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in publication of summons.

§ 477. WRITTEN AND SUBSCRIBED.] The deposition must be written by the officer, or, in his presence, by the witness, or some disinterested person; and must be subscribed by the witness.

§ 478. HOW RETURNED—OPENING—MAY BE TAKEN AND USED IN OTHER TRIBUNALS.] The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the district court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney. Depositions taken pursuant to this chapter, shall be admitted in evidence, on the trial of any civil action or proceeding, pending before any other court, officer or tribunal, and such deposition must be sealed up, indorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer, to such court, officer or tribunal.

§ 479. READ IN ACTION BETWEEN SAME PARTIES.] When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding upon the same matter, between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this chapter.

§ 480. HOW AUTHENTICATED.] Depositions taken pursuant to this chapter by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act or authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof, adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was, at the time of taking the same within the meaning of this chapter, authorized to take the same. But if the deposition be taken within or without this territory, under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

§ 481. CERTIFICATE TO DEPOSITION.] The officer taking the deposition shall annex thereto a certificate showing the following facts:

1. That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth.

2. That the deposition was reduced to writing by some proper person, naming him.

3. That the deposition was written and subscribed in the presence of the officer certifying thereto.

4. That the deposition was taken at the time and place specified in the notice.

§ 482. REQUISITE TO READING.] When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court that for some cause, specified in section 469 of this code, the attendance of the witness cannot be procured.

§ 483. WHEN DEPOSITION FILED.] Every deposition intended to be read in evidence on the trial must be filed at least one day before the trial.

EXCEPTIONS TO DEPOSITIONS.

§ 484. IN WRITING.] Exceptions to depositions shall be in writing, specifying the grounds of objections, and filed with the papers in the cause.

§ 485. WHEN FILED.] No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial.

§ 486. HEARD BEFORE TRIAL.] The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial.

§ 487. ERRORS WAIVED.] Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to.

OF PUBLIC DOCUMENTS, RECORDS, ETC.

§ 488. STATUTES, DECISIONS, MAPS AND BOOKS.] Printed copies in volumes of statutes, code, or other written law, enacted by any other territory or state, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such territory, state or government, shall be admitted by the courts and officers of this territory on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other territory, state or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law. The term "public document" is defined to be all the publications and maps printed by order of the legislative assembly, or congress, or either house thereof; and all such documents are admissible in evidence.

§ 489. JUDICIAL RECORDS, ETC.] Copies of the records and judicial proceedings of any court of any state or territory of the United States, shall be admissible in evidence in all cases in this territory, when attested by the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the attestation is in due form. And the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within this territory as they have by law or usage in the courts of the state or territory from which they are taken.

§ 490. PROOF OF PUBLICATION.] The affidavit of any printer, foreman of any printer, or publisher of any newspaper published in this territory, of the publication of any notice, order, or advertisement which, by any law of this territory, shall be required or authorized to be published in such newspaper, shall be entitled to be read in evidence in all courts of justice, and in all proceedings before any officer, board, or body, and shall be prima facie evidence of such publication and of the facts stated therein.

§ 491. CERTIFIED JUSTICE'S RECORD.] A transcript from the docket of any justice of the peace, of any judgment had before him, of the proceedings in the action, of the execution issued thereon, if any, and of the return to such execution if any, when certified by such justice, shall be evidence to prove the facts contained in such transcript, in any court or legal proceedings in the county or subdivision wherein such judgment was rendered.

§ 492. EVIDENCE IN OTHER COUNTY.] And such transcript may be read in evidence in any other county or subdivision, when there shall be attached thereto a certificate of the clerk of the district court, of the county or subdivision in which such judgment was rendered, under the seal of the court, to the effect that the person subscribing such transcript was, at the date of the judgment therein mentioned, a justice of the peace of such county.

§ 493. ACKNOWLEDGED INSTRUMENTS] Every instrument in writing, which is acknowledged or proved, and duly recorded, is admissable as evidence without further proof.

§ 494. RECORD OR COPY HOW EVIDENCE.] The record of such instrument, or a duly authenticated copy thereof, is admissable in evidence whenever, by the party's own oath, or otherwise, the original is shown to be lost, or not belonging to the party wishing to use the same, and not within his control.

§ 495. OFFICIAL RECORDS.] Entries in public or other official books or records, made in the performance of his duty by a public officer of this territory, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

§ 496. SAME.] An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

§ 497. CERTIFICATE TO COPY—CONTENTS.] Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or, if he be the clerk of a court, having a seal, under the seal of such court.

§ 498. DEEMED NATURALLY DEAD.] If any person, upon whose life any estate in real property depends, remains without the United States, or absents himself in the territory or elsewhere, for seven years together, such person must be accounted naturally dead, in any action or special proceeding concerning such property, in which his death shall come in question, unless sufficient proof be made in such case of the life of such person.

§ 499. CONFIDENTIAL RELATIONS INVIOLATE.] There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

2. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined in the church to which he belongs.

3. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

4. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

§ 500. HOW WAIVED.] If a person offer himself as a witness, that is to be deemed a consent to the examination, also, of an attorney, clergyman, priest, physician, or surgeon on the same subject, within the meaning of the first three subdivisions of the preceding section.

§ 501. WHEN JUDGE OR JUROR WITNESS.] The judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the court or judge to order the trial to be postponed, and to take place before another judge or jury.

§ 502. INTERPRETERS—SUBPOENA—OATH.] When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county may be subpœnaed by any court or judge to appear before such court or judge to act as an interpreter in any action or proceeding. The subpœna must be served and returned in like manner as a subpœna for a witness. Any person so subpœnaed who fails to attend at the time and place named in the subpœna, is guilty of contempt. The oath of the interpreter shall be as follows:

You do solemnly swear that you will justly, truly, and impartially interpret to .... the oath about to be administered to him; and the questions which may be asked him, and the answers that he shall give to such questions, relative to the cause now under consideration before this court [or officer.] So help you God.

If the interpreter have conscientious scruples as to taking an oath, he may affirm in form as heretofore provided in case of witnesses.

PROCEEDINGS TO PERPETUATE TESTIMONY.

§ 503. STATEMENTS IN VERIFIED PETITION.] The testimony of a witness may be perpetuated in the following manner: The applicant shall file in the office of the clerk of the district court, a petition to be verified, in which shall be set forth specially, the subject-matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give of such persons, as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court in this territory, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be plaintiff.

§ 504. ORDER FOR EXAMINATION.] The court or judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

§ 505. ATTORNEY WHEN—EXAMINATION.] When it appears satisfactory to the court or judge that the parties interested cannot be notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some of them. The attorney filing the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

§ 506. BEFORE WHOM—RETURN.] Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed.

§ 507. APPROVAL, FILING AND USE.] The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof may be given in evidence by either party, where the witnesses are dead or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

§ 508. COSTS.] The applicant shall pay the costs of all such proceedings.

CHAPTER XXII.

MOTIONS AND ORDERS.

§ 509. ORDER DEFINED.] Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order.

§ 510. MOTIONS—NOTICE—PREFERENCE—STAY—REFEREE.] 1. An application for an order is a motion.

2. Orders made out of court, without notice, may be made by any judge of the court, in any part of the territory.

3. Motions upon notice must be made within the district in which the action is triable.

4. In all the districts, a motion to vacate or modify a provisional remedy, and an appeal from an order allowing a provisional remedy, shall have preference over all other motions.

5. No order to stay proceedings for a longer time than twenty days shall be granted by a judge out of court, except to stay proceedings under an order or judgment appealed from, or upon previous notice to the adverse party.

When any party intends to make or oppose a motion in any court, and it shall be necessary for him to have the affidavit of any person who shall have refused to make the same, such court may, by order, appoint a referee to take the affidavit or deposition of such person. Such person may be subpœnaed and compelled to attend and make an affidavit before such referee, the same as before a referee to whom it is referred to try an issue, and the fees of such referee, for such service, shall be three dollars per day.

§ 511. SERVICE OF NOTICE.] When a notice of a motion is necessary, it must be served three days before the time appointed for the hearing; but the court or judge may, by an order to show cause, prescribe a shorter time.

§ 512. EXTENSION OF TIME.] The time within which any proceeding in an action must be had, after its commencement, except the time within which an appeal must be taken, may be enlarged, upon an affidavit showing grounds therefor, by a judge of the court. The affidavit, or a copy thereof, must be served, with a copy of the order, or the order may be disregarded.

CHAPTER XXIII.

NOTICES, AND FILINGS AND SERVICE OF PAPERS.

§ 513. NOTICES IN WRITING.] Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections, where not otherwise provided by this code.

§ 514. MANNER OF SERVICE.] The service may be personal, or by delivery to the party or attorney, on whom the service is required to be made; or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the paper with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving it, between the hours of six in the morning, and nine in the evening, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving it at the attorney's residence, with some person of suitable age and discretion.

2. If upon a party, it may be made by leaving the paper at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

§ 515. BY MAIL.] Service by mail may be made where the person making the service and the person on whom it is to be made reside in different places between which there is a regular communication by mail.

§ 516. METHOD OF SAME.] In case of service by mail, the paper must be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid.

§ 517. SAME—DOUBLE TIME.] When the service is by mail, it shall be double the time required in cases of personal service, except service of notice of trial, which may be made sixteen days before the day of trial, including the day of service.

§ 518. PERSONAL—THREE DAYS.] Notice of a motion, or other proceeding before a court or judge, when personally served, shall be given at least three days before the time appointed therefor.

§ 519. WHEN NOTICE UNNECESSARY.] Where a defendant shall not have demurred or answered, service of notice or papers, in the ordinary proceedings in an action, need not be made upon him unless he be imprisoned for want of bail, but shall be made upon him or his attorney, if notice of appearance in the action has been given.

§ 520. NON-RESIDENT PARTY.] Where a plaintiff or a defendant who has demurred or answered, or gives notice of appearance, resides out of the territory, and has no attorney in the action, the service may be made by mail, if his residence be known; if not known, on the clerk of the court for the party.

§ 521. SUMMONS AND PLEADINGS WHEN FILED.] The summons and the several pleadings in an action shall be filed with the clerk within ten days after the service thereof, respectively, or the adverse party, on proof of the omission, shall be entitled, without notice, to an order from a judge that the same be filed within a time to be specified in the order, or be deemed abandoned.

§ 522. SERVICE UPON ATTORNEY.] Where a party shall have an attorney in the action, the service of papers shall be made upon the attorney, instead of the party.

§ 523. CERTAIN PROCESS NOT INCLUDED.] The provisions of this chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt.

CHAPTER XXIV.

DUTIES OF SHERIFFS AND CORONERS.

§ 524. SERVICE OF PAPERS—IN SUBDIVISION.] Whenever, pursuant to this code the sheriff may be required to serve or execute any summons, order, or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and the provisions of this code relating to the sheriff shall apply to coroners when the sheriff is a party. The sheriffs and coroners of the several counties in which the district courts are held, shall have and exercise the same power and authority in the service of papers, and the execution of writs and process of such courts in any county or place within the subdivision of which this county forms a part, as they have or can exercise in their own county.

CHAPTER XXV.

MISCELLANEOUS PROVISIONS.

§ 525. COPY OF LOST PAPER.] If any process, original pleadings, or any other paper be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

§ 526. UNDERTAKINGS WHERE FILED.] The various undertakings required to be given by this code, must be filed with the clerk of the court, unless the court expressly provides for a different disposition thereof, except that the undertakings provided for in this code for the claim and delivery of personal property, shall, after the justification of the sureties, be delivered by the sheriff to the parties respectively for whose benefit they are taken.

§ 527. TITLE OF AFFIDAVITS.] It shall not be necessary to entitle an affidavit in the action, but an affidavit made without a title, or with a defective title, shall be as valid and effectual, for every purpose, as if it were duly entitled if it intelligibly refer to the action or proceeding in which it is made.

§ 528. CONSOLIDATING ACTIONS.] When two or more actions are pending at one time between the same parties and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated.

§ 529. ACTION WHEN PENDING.] An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment be sooner satisfied.

§ 530. CLERK'S REGISTER OF ACTIONS.] The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

CHAPTER XXVI.

ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO AND OF INFORMATION IN THE NATURE OF QUO WARRANTO.

§ 531. BY CIVIL ACTION.] The remedies formerly attainable by the writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto may be obtained by civil actions under the provisions of this chapter.

§ 532. TERRITORY AGAINST CORPORATION.] An action may be brought by any district attorney in the name of the territory, on leave granted by the district court, or judge thereof, for the purpose of vacating the charter or the articles of incorporation, or for annulling the existence of a corporation other than municipal, whenever such corporation shall:

1. Offend against any of the laws creating, altering, or renewing, such corporation; or,

2. Violating the provisions of any law, by which such corporation shall have forfeited its charter or articles of incorporation, by abuse of its power; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law.

And it shall be the duty of any district attorney, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted to bring the action, in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the territory against the costs and expenses to be incurred thereby.

§ 533 LEAVE TO BRING SUCH ACTION.] Leave to bring the action may be granted upon the application of any district attorney; and the court or judge may, at discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

§ 534. TERRITORY AGAINST PERSON USURPING — OFFICER—ILLEGAL CORPORATION.] An action may be brought by any district attorney in the name of the territory, upon his own information, or upon the complaint of any private party, against the parties offending in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this territory, or any office in a corporation created by the authority of this territory; or,

2. When any public officer, civil or military, shall have done or suffered

an act which, by the provisions of law, shall make a forfeiture of his office; or,

3. When any association or number of persons shall act within this territory as a corporation, without being duly incorporated.

§ 535. PERSON JOINED WITH TERRITORY.] When an action shall be brought by the district attorney by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the territory as plaintiff. And in every such case the district attorney may require, as a condition for bringing such action, that satisfactory security shall be given to indemnify the territory against costs and expenses to be incurred thereby.

§ 536. PROCEEDINGS FOR USURPING OFFICE.] Whenever such action shall be brought against a person for usurping an office, the district attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the court for the arrest of such defendant, and holding him to bail; and thereupon he shall be arrested and held to bail, in the manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

§ 537. JUDGMENT INCLUDES CLAIMANT] In every such case, judgment shall be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

§ 538. CLAIMANT TAKES OFFICE WHEN.] If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office; and it shall be his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he shall have been excluded.

§ 539. REFUSAL TO DELIVER.] If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be deemed guilty of a misdemeanor, and the same proceedings shall be had, and with the same effect, to compel delivery of such books and papers, as are or may hereafter be prescribed by law.

§ 540. DAMAGES FOR USURPATION.] If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

§ 541. JOINDER OF SEVERAL CLAIMANT.] Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 542. JUDGMENT AGAINST INTRUDER.] When a defendant, whether a natural person, or a corporation, against whom such action shall have been brought shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding five hundred dollars, which fine, when collected, shall be paid into the treasury of the territory.

§ 543. AGAINST CORPORATION.] If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchise, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

§ 544. COSTS, HOW COLLECTED.] If judgment be rendered in such action against a corporation, or against a person claiming to be a corporation, the court may cause the costs therein to be collected by execution against the person claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

§ 545. CLOSING CORPORATE AFFAIRS.] When such judgment shall be rendered against a corporation the court has power to restrain the corporation, to appoint a receiver of its property, and to take an account and make distribution thereof among its creditors; and the district attorney must, immediately after the rendition of such judgment, institute proceedings for that purpose.

§ 546. JUDGMENT FILED WITH SECRETARY.] Upon the rendition of such judgment against a corporation, the district attorney must cause a copy of the judgment to be forthwith filed in the office of the secretary of the territory, whose duty it shall be to record the same.

§ 547. FORFEITURES TO TERRITORY.] Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the territory, or to any officer for its use, an action for the recovery of such property, alleging the ground of the forfeiture, may be brought by the district attorney, in the district court of the county or subdivision where the property is situated.

CHAPTER XXVII.

ACTION FOR THE PARTITION OF REAL PROPERTY.

§ 548. WHEN ACTION BROUGHT.] When several co-tenants hold and are in possession of real property as parceners, joint-tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

§ 549. REQUISITES OF COMPLAINT.] The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

§ 550. LIENORS OF RECORD.] No person having a conveyance of or claiming a lien on the property, or some part of it need be made a party to the action, unless such conveyance or lien appear of record.

§ 551. LIS PENDENS REQUIRED.] Immediately after filing the complaint in the district court, the plaintiff must record in the office of the register of deeds of the county, or of the several counties in which the property is situated, a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of filing such notice for record all persons shall be deemed to have notice of the pendency of the action.

§ 552. SUMMONS TO WHOM.] The summons must be directed to all the joint-tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise upon the property, or upon any particular portion thereof; and generally, to all persons unknown who have or claim any interest in the property.

§ 553. SERVICE BY PUBLICATION.] If the party having a share or interest be unknown, or any one of the unknown parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property, which is the subject of the action.

§ 554. REQUISITES OF ANSWERS.] The defendants who have been personally served with the summons and a copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly the origin, nature and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon; also whether the same has been secured in any other way, or not; and if secured, the nature and extent of such security, or they are deemed to have waived their right to such lien.

§ 555. TITLE, PROOFS AND JUDGMENT.] The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried and determined, in such action; and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court, before the judgment of sale can be made; and where service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, as not between themselves.

§ 556. PART PARTITION AND SUBDIVISION.] Whenever from any cause it is, in the opinion of the court, impracticable or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-tenants were the parties, and sole parties, in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained or allotted as between those claiming under the original tenant to whom the same shall have been so set apart or may allow them to remain tenants in common thereof, as they may desire.

§ 557. OUTSTANDING LIENS—REFEREE.] If it appear to the court by the certificate of the register of deeds, or clerk of the district court, or by the sworn or verified statement of any person who may have examined or searched the records that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or, if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

§ 558. APPEARANCE BEFORE REFEREE—SERVICE—REPORT.] The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed as provided in the preceding section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the amount due or to become due contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agent, under the direction of the court, in such manner as may be proper. The report of the referee thereon must be made to the court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

§ 559. SALE OR PARTITION.] If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise upon the requisite proof being made, it must order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

§ 560 METHOD AND RULES OF PARTITION] In making the partition, referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper land-marks, and may employ a surveyor, with the necessary assistants to aid them. Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road or street, and the portion so set apart shall not be assigned to any of the parties, or sold, but shall remain an open and public way, road or street, unless the referees shall set the same apart as a private way for the use of the parties interested, or some of them, their heirs and assigns, in which case it shall remain such private way.

§ 561. REFEREES' REPORT.] The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust, and describing the property divided, and the share allotted to each party, with a particular description of each share.

§ 562. JUDGMENT ON REPORT—EFFECT OF.] The court may confirm, change, modify, or set aside, the report, and if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive:

1. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

2. On all persons interested in the property, who may be unknown, to whom notice has been given in the action for partition by publication.

3. On all other persons claiming from such parties or persons, or either of them.

And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns, of such decedent as if it had been entered before his death.

§ 563. TENANTS NOT AFFECTED.] The judgment does not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

§ 564. PAYMENT OF EXPENSES.] The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof together with the fees allowed by the court, in its discretion, to the referees, must be apportioned among the different parties to the action, equitably.

§ 565. LIENS FOLLOW OWNER'S SHARE.] When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

§ 566. CERTAIN ESTATES SET OFF.] When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property, not ordered to be sold.

§ 567. PROCEEDS OF INCUMBERED PROPERTY APPLIED.] The proceeds of the sale of incumbered property must be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action.

2. To pay the costs of the reference.

3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.

4. The residue among the owners of the property sold, according to their respective shares therein.

§ 568. LIENOR HAVING OTHER SECURITY.] Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such security to be exhausted before distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

§ 569. DISTRIBUTION BY REFEREE.] The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court.

§ 570. PART ACTION CONTINUED.] When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action.

§ 571. SALES HOW MADE.] All sales of real property, made by referees under this chapter, must be made at public auction to the highest bidder,

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upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that must be stated in the notice.

§ 572. TERMS OF SALE.] The court must, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the real property of which it may direct a sale on credit, and for that portion of which the purchase money is required, to be invested for the benefit of unknown owners, infants or parties out of the territory.

§ 573. SECURITY FOR PURCHASE MONEY.] The referees may take separate mortgages and other securities for the whole, or convenient portions of the purchase money, or such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares in the name of clerk of the district court, and his successors in office.

§ 574. ESTATE FOR LIFE OR YEARS.] The person entitled to a tenancy for life, or years, whose estate has been sold, is entitled to receive such sum, as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

§ 575. COMPENSATION FOR.] If such consent be not given, filed and entered as provided in the last section, at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in court for him, as the case may require.

§ 576. SAME UNKNOWN.] If the persons entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

§ 577. FUTURE ESTATES.] In all cases of sales, where it appears that any person has a vested or contingent future right or estate in any of the property sold, the court must ascertain and settle the proportionate value of such contingent or vested right or estate, and must direct such proportion of the proceeds, of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

§ 578. ANNOUNCEMENTS AT SALE.] In all cases of sales of property, the terms must be made known at the time, and if the premises consist of distinct farms or lots, they must be sold separately.

§ 579. INTEREST EXCLUDES BUYERS.] Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

§ 580. REPORT OF SALE.] After completing a sale of the property, or any part thereof, ordered to be sold, the referees must report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser; the price paid or secured; the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the clerk of the district court where the property is situated.

§ 581. ORDER TO CONVEY.] If the sale be confirmed by the court, an order must be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

§ 582. LIENOR OR PARTY A PURCHASER.] When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

§ 583. RECORD AND BAR OF CONVEYANCE.] The conveyance must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action; and against all such parties and persons as were unknown if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens, at the commencement of the action.

§ 584. PROCEEDS DUE UNKNOWN.] When there are proceeds of a sale belonging to an unknown owner, or to a person without the territory who has no legal representative within it, the same must be invested in bonds of the United States for the benefit of the persons entitled thereto.

§ 585. SECURITIES RUN TO CLERK.] When the security of the proceeds of the sale is taken, or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the clerk of the district court of the county where the papers are filed, and his successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

§ 586. SECURITY TO PARTIES.] When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto, and must be delivered to such parties upon their receipts therefor. Such agreement and receipt must be returned and filed with the clerk.

§ 587. CLERK'S DUTY.] The clerk of the district court, in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and must deposit with the county treasurer all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

§ 588. COMPENSATION FOR INEQUALITY.] When it appears that the partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

§ 589. INFANT'S SHARE.] When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the especial guardian appointed for him in the action, upon giving the security required by law, or directed by order of the court.

§ 590. INSANE AND INCOMPETENT.] The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking, approved by a judge of the court, that he will faithfully discharge the trust imposed in him, and will render a true and just account to the person entitled, or to his legal representative.

§ 591. GUARDIAN'S POWERS.] The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs, who is interested in real property held in joint tenancy, or in common, or in any other manner, so as to authorize his being made a party to an action for the partition of, may consent to a partition without action, and agree upon the share to be set off to such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

§ 592. FEES AND DISBURSEMENTS.] The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties there, or any of them.

§ 593. SINGLE REFEREE.] The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under this chapter; and the single referee, when thus appointed, has all the powers, and may perform all the duties required of the three referees.

§ 594. ABSTRACT OF TITLE—COST OF SAME.] If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any of the defendants shall have had such abstract afterwards made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties, must be allowed and taxed. Whenever such abstract is produced by the plaintiff, before the commencement of the action, he must file with his complaint a notice that an abstract of the title has been made, and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action, any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same, and where it will be kept when finished. The court, or the judge thereof, may direct from time to time, during the progress of the action, who shall have the custody of the abstract.

§ 595. WHO MAKE ABSTRACTS.] The abstract mentioned in the last preceding section may be made by any competent searcher of records, and need not be certified by the register of deeds or other officer, but instead thereof it must be verified by the affidavit of the person making it, to the effect that he believes it to be correct; but the same may be corrected from time to time if found incorrect, under the direction of the court.

§ 596. INTEREST ON DISBURSEMENTS.] Whenever, during the progress of the action for partition, any disbursements shall have been made, under the direction of the court or the judge thereof, by a party thereto, interest must be allowed thereon from the time of making such disbursements.

CHAPTER XXVIII.

FORECLOSURE OF MORTGAGES.

FORECLOSURE BY ADVERTISEMENT.

§ 597. POWER OF SALE.] Every mortgage of real property containing therein a power of sale, upon default being made in the condition of such mortgage, may be foreclosed by advertisement in the cases and manner hereinafter specified.

§ 598. REQUISITES OF PROCEEDING.] To entitle any party to give notice as hereinafter prescribed, and, to make such foreclosure, it shall be requisite:

1. That some default in a condition of such mortgage shall have accrued by which the power to sell has become operative.

2. That no action or proceedings shall have been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or, if any action or proceeding has been instituted, that the same has been discontinued, or, that an execution, upon the judgment rendered therein, has been returned unsatisfied, in whole or in part; and,

3. That the mortgage containing such power of sale has been duly recorded, and, if it shall have been assigned, that all the assignments thereon have been duly recorded in the county where such mortgaged premises are situated.

§ 599. INSTALLMENTS TAKEN SEPARATE.] In cases of mortgages given to secure the payment of money by installments, each of the installments mentioned in such mortgage, after the first, shall be taken and deemed to be a separate and independent mortgage, and such mortgage, for each of such installments, may be foreclosed in the same manner and with like effect, as if such separate mortgage were given for each such subsequent installment; and a redemption of any such sale, shall have the like effect as if the sale for such installment had been made upon a prior, independent mortgage.

§ 600. PUBLISHING NOTICE.] Notice that such mortgage will be foreclosed by sale of the mortgaged premises, or some part of them, must be given by publishing the same for six successive weeks, at least once in each week, in a newspaper of the county where the premises intended to be sold, or some of them, are situated, if there be one, and, if not, then in the nearest newspaper published in the territory.

§ 601. CONTENTS OF SAME.] Every notice must specify:

1. The names of the mortgagor and mortgagee, and the assignee, if any.
2. The date of the mortgage.
3. The amount claimed to be due thereon at the date of the notice.
4. A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and,
5. The time and place of sale.

§ 602. MANNER OF SALE.] The sale must be at public auction between the hours of nine o'clock in the forenoon and the setting of the sun on that day, in the county in which the premises to be sold, or some part of them, are situated, and must be made by the person appointed for that purpose in the mortgage, or by the sheriff or his deputy of the county, to the highest bidder.

§ 603. POSTPONEMENT OF SALE.] Such sale may be postponed, from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until such time to which the sale shall be postponed, at the expense of the party requesting such postponement.

§ 604. SEPARATE SALES OF TRACTS.] If the mortgaged premises consist of distinct farms, tracts, or lots, they must be sold separately, and no more farms, tracts, or lots, must be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and the costs and expenses allowed by law.

§ 605. MORTGAGEE MAY PURCHASE.] The mortgagee, his assigns, or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof at such sale.

§ 606. CERTIFICATE OF SALE.] Whenever any real property shall be sold by virtue of a power of sale contained in any mortgage, the officer or person making the sale shall immediately give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.

And such officer or person shall file in the office of the register of deeds, where the mortgage is recorded, within ten days from the day of sale, a duplicate of such certificate; which certificate must be executed and acknowledged, and may be recorded as provided in case of a certificate of sale of real property upon execution, and shall have the same validity and effect.

§ 607. REDEMPTION—BY WHOM—RIGHTS.] The property sold may be redeemed within one year from the day of sale in like manner and to the same effect as provided in chapter XIII of this code for redemption of real property sold upon execution, so far as the same may be applicable, by:

1. The mortgagor or his successor in interest in the whole or any part of the property.
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. Such creditor is termed a redemptioner, and has all the rights of a redemptioner under that chapter.

And the mortgagor and his successor in interest, has all the rights of the judgment debtor and his successor in interest as provided therein.

§ 608. NOTICE TO OFFICER.] The notice of redemption required to be given to the sheriff under that chapter, may, in foreclosure by advertisement, be given to the officer or person making the sale.

§ 609. DEED.] If such mortgaged premises be not redeemed, it shall be the duty of the officer, or his successor in office, or other person, who sold the same, or his executors or administrators, or some other person appointed by the district court for that purpose, to complete such sale, by executing a deed of the premises, so sold, to the original purchaser, his heirs or assigns, or to any person who may have acquired the title and interest of such purchaser by redemption or otherwise.

§ 610. OVERPLUS.] If after any such sale, there remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on such real property sold, and payment of the costs and expenses of such foreclosure and sale, the surplus must be paid over by such officer or other person, on demand, to the mortgagee, his legal representatives or assigns.

§ 611. RECORD EVIDENCE OF SALE.] Any party desiring to perpetuate the evidence of any such sale, made in pursuance of these provisions, may proceed:

1. An affidavit of the publication of the notice of the sale, and of any notice of postponement may be made by the printer or publisher of a newspaper in which such notice was published, or some person in his employ knowing the facts.

2. An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place, the sum bid, and the name of the purchaser.

The affidavits specified in this section may be taken and certified by any officer authorized to administer oaths.

§ 612. AFFIDAVITS RECORDED] Such affidavits must be recorded at length by the register of deeds of the county in which the real property is situated, in a book kept for the record of mortgages, and such original affidavits, the record thereof, and certified copies of such record, shall be prima facie evidence of the facts therein contained.

§ 613. REFERENCE NOTE.] A note referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the register recording such evidence in the margin of the record of such mortgage.

§ 614. EFFECT OF RECORD AND DEED.] A record of the affidavits aforesaid, and the deed executed, upon the sale of the real property shall vest in the purchaser or person acquiring title thereto by redemption or otherwise, the same force and validity as the deed upon foreclosure by action provided for in section 623 of this code.

§ 615. COSTS AND ATTORNEY'S FEE] The party foreclosing a mortgage by advertisement shall be entitled to his costs and disbursements, out of the proceeds of the sale, in addition to any attorney fee agreed upon in the mortgage.

FORECLOSURE BY ACTION.

§ 616. WHERE REALTY SITUATE—SERVICE OF PROCESS] Actions for the foreclosure or satisfaction of mortgages may be brought in the district court of the county or judicial subdivision where the mortgaged real property, or some portion thereof, is situated, and in case any defendant be not a resident of the county or subdivision, process may be served on him in any other county or subdivision within the territory; or, if he be a non-resident of the territory, or absent, or concealed, the same proceedings may thereupon be had as are provided by this code in such cases.

§ 617. JUDGMENT INCLUDES] Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage, the court shall have power to render a judgment against the mortgagor for the amount of the mortgage debt due at the time of the rendition of such judgment, and the costs of the action, and to order and decree a sale of the mortgaged premises, or such part thereof as may be sufficient to pay the amount so adjudged to be due, and costs of sale, and shall have power to order and compel the delivery of the possession of the premises to the purchaser; but in no case under this chapter shall the possession of the premises so sold, be delivered to the purchaser, or person entitled thereto until after the expiration of one year from such sale; and the court may direct the issuing of an execution for the balance that may remain unsatisfied after applying the proceeds of such sale.

§ 618. ACTION EXCLUSIVE.] After such action shall be commenced while the same is pending, no proceedings at law shall be had for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

§ 619. OTHER PARTY.] If the mortgage debt be secured by the obligation, or other evidence of debt, of any other person than the mortgagor, the plaintiff may make such other person a party to the action, and the court may render judgment for the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as against the mortgagor, and may enforce such judgment as in other cases, by execution or other process.

§ 620. COMPLAINT TO STATE.] In an action for the foreclosure or satisfaction of a mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof; and if there has, whether any and what part thereof has been collected.

§ 621. JUDGMENT AT LAW.] If it appear that any judgment has been obtained in an action at law for the moneys demanded by such complaint, or any part thereof, no proceedings shall be had in such case unless an execution against the property of the defendant in such judgment has been issued and the sheriff or other officer shall have made return that the execution is unsatisfied in whole or in part, and that the defendant has no property whereon to satisfy such execution.

§ 622. SALES BY WHOM AND WHERE.] All sales of mortgaged premises under an order and decree of foreclosure must be made by a referee, sheriff, or his deputy, of the county or subdivision where the court, in which the judgment or decree is rendered, is held, or other person appointed by the court for that purpose, and must be made in the county or subdivision where the premises, or some part of them, are situated, and shall be made upon the like notice and in the same manner as provided by law for the sale of real property upon execution.

§ 623. CERTIFICATE OF SALE—DEED AND EFFECT.] Whenever any real property shall be sold under an order, decree or judgment of foreclosure, under the provisions of this chapter, the officer or other person making the sale must give to the purchaser a certificate of sale as provided by section 606 of this code; and at the expiration of the time for the redemption of such mortgaged premises, if the same be not redeemed, the person or officer making the sale, or his successor in office or other officer appointed by the court, must make to the purchaser or purchasers, their heirs or assigns, or to any person acquiring the title of such purchaser, by redemption or otherwise, a deed or deeds to such premises which shall vest in the purchaser, or other party entitled thereto, the same estate that was vested in the mortgagor at the time of the execution and delivery of the mortgage, or at any time thereafter; and such deed shall be as valid as if executed by the mortgagor and mortgagee, and shall be a complete bar against each of them, and against all the parties to the action in which the judgment for such sale was rendered, and against their heirs respectively, and all persons claiming under such heirs.

§ 624. PROCEEDS—OVERPLUS.] The proceeds of every such sale must be applied to the discharge of the debt adjudged by the court to be due, and of the costs; and, if there be any overplus, it must be brought into court for the use of the defendant or of the person entitled thereto, subject to the order of the court.

§ 625. SAME.] If such overplus, or any part thereof, shall remain in court, for the term of three months, without being applied for, the judge of the district court may direct the same to be put out at interest, for the benefit of the defendant, his representatives or assigns, subject to the order of the court.

§ 626. PART PAYMENT.] Whenever an action shall be commenced for the foreclosure of a mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendants bringing into court at any time before decree of sale, the principal and interest due, with costs and disbursements.

§ 627. SAME BEFORE SALE.] If at any time before sale, the defendant shall bring into court the principal and interest due, with cost, the proceedings in such action shall be stayed until a further default, and in case of a subsequent default in the judgment of any of the installments, or any part thereof, of such mortgage, the court may enforce by order or other process the collection of such subsequent installment.

§ 628. REFEREE VIEW PREMISES.] If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a judgment or decree shall be entered for the plaintiff, the court may appoint a referee to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree must direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such judgment or decree shall remain as security for any subsequent default.

§ 629. SUCCESSIVE JUDGMENTS AND SALES.] If, in the case mentioned in the preceding section, there shall be any default subsequent to such judgment or decree, in the payment of any portion or installment of the principal or of any interest, due upon such mortgage, the court may, upon the application of the plaintiff, by a further order founded upon such first judgment or decree, direct a sale of so much of the mortgaged premises to be made, under such decree, as will be sufficient to satisfy the amount so due, with costs of the application and the subsequent proceedings thereon; and the same proceedings may be had as often as a default happen.

§ 630. SALE OF WHOLE ON FIRST DEFAULT.] If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the judgment or decree must, in the first instance, be entered for the sale of the whole premises accordingly.

§ 631. REBATE ON UNDUE PART.] In such case the proceeds of such sale must be applied as well to the interest or portion or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest for the time during which residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest for the benefit of the plaintiff, to be paid to him as the installments or portions of the principal or interest, may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them by order of the court.

§ 632. APPEALS.] Appeals to the supreme court may be taken in actions for the foreclosure of mortgages in the same manner as in other civil actions.

§ 633. REDEMPTION.] All real property sold upon foreclosure of mortgages, by order, judgment, or decree of court, may be redeemed at any time within one year after such sale, as prescribed by section 635 of this chapter upon foreclosure by advertisement.

§ 634. RESTRAINT OF INJURY.] The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the existence of the lien or forclosure of a mortgage thereon and until the expiration of the time allowed for redemption.

CHAPTER XXIX.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER ACTIONS CONCERNING REAL ESTATE.

§ 635. EJECTMENT.] An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim.

§ 636. DEFAULT—NO COSTS] If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

§ 637. DESCRIPTION.] In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution to identify it.

§ 638. JOINDER OF DEFENDANTS.] In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

§ 639. OF PLAINTIFFS.] Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint-tenants, co-parceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

§ 640. RIGHT FAILING AFTER ACTION.] In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

§ 641. IMPROVEMENTS IN GOOD FAITH.] In an action for the recovery of real property, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith the value of such improvements must be allowed as a counter claim by such defendant.

§ 642. SAME—HOW PLEADED.] The counter-claim in such action must set forth among other things, the value of the land aside from the improvements thereon, and also as accurately as practicable the improvements upon the land and the value thereof.

§ 643. SPECIFIC FINDINGS.] Issues may be joined and tried as in other actions and the value of the land aside from the value of the improvements thereon, and the separate value of the improvements must be specifically found by the verdict of the jury, the report of the referee, or the findings of the court.

§ 644. CROSS JUDGMENTS—ADJUSTMENT.] The judgment of the court upon such finding, if in favor of the plaintiff, for the recovery of the real property, and in favor of the defendant for the counter-claim, shall require such defendant to pay to the plaintiff the value of the land as determined by such finding, and the damages, if any, recovered, for withholding the same and for waste committed upon such land by the defendant within sixty days from the rendition of such judgment, and in default of such payment by the defendant, that the plaintiff shall pay to the defendant the value of the improvements as determined by such finding, less the amount of any damages so recovered by plaintiff for withholding the property, and for any waste committed upon such land by the defendant, and until such payment or tender and deposit in the office of the clerk of the court, in which such action is pending, no execution or other process shall issue in such action to dispossess such defendant, his heirs or assigns.

§ 645. RIGHT OF ENTRY.] The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property, and make survey and measurement thereof, and of any tunnels, shafts or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

§ 646. ORDER FOR—SERVICE.] The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

§ 647. PURCHASER UNDER EXECUTION.] When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyances.

§ 648. ALIENATION NOT TO AFFECT ACTION.] An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

§ 649. MINING CUSTOMS.] In actions respecting mining claims, proof must be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages or regulations, when not in conflict with the laws of this territory and of the United States, must govern the decision of the action.

§ 650. OCCUPYING CLAIMANTS.] Any person settled upon the public lands belonging to the United States, on which settlement is not expressly prohibited by congress, or some department of the general government, may maintain an action for any injuries done the same, also an action to recover the possession thereof, in the same manner as if he possessed a fee-simple title to said lands.

CHAPTER XXX.

ACTION FOR NUISANCE, WASTE, AND WILLFUL TRESPASS ON REAL PROPERTY.

§ 651. NUISANCE DEFINED—WHO MAY BRING ACTION.] Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comforable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

§ 652. WASTE—WHEN ACTIONABLE.] If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the premises.

§ 653. To whom judgment given.] Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion, against the tenant in possession, when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

CHAPTER XXXI.

ACTION TO ENFORCE MECHANICS' LIENS.

§ 654. No lien.] No person is entitled to a mechanics' lien who takes collateral security on the same contract.

§ 655. Lien to whom and for what.] Every mechanic, or other person who shall do any labor upon, or furnish any materials, machinery, or fixtures for any building, erection or other improvements upon land, including those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor or subcontractor, upon complying with the provisions of this chapter, shall have for his labor done, or materials, machinery or fixtures furnished, a lien upon such building erection or improvement, and upon the land belonging to such owner, on which the same is situated, to secure the payment of such labor done, or materials, machinery, or fixtures furnished.

§ 656. Proceedings by subcontractor.] Every subcontractor wishing to avail himself of the benefits of this chapter, shall give notice to the owner, his agent or trustee, before or at the time he furnishes any of the things aforesaid or performs any labor, of his intention to perform the same, and the probable value thereof; and if afterwards the things are furnished or labor done, the subcontractor shall settle with the contractor therefor, and the settlement in writing, signed by the contractor and certified by him to be just, shall be given to the owner, his agent or trustee; within thirty days from the time the things shall have been furnished or the labor performed, the subcontractor shall file with the clerk of the district court of the county or judicial subdivision in which the building, erection or other improvement is situated, a copy of such settlement, which shall be a lien on such building, erection or other improvement for which the things were furnished or the labor performed; and shall at the time file a correct description of the property to be charged with the lien, the correctness of which shall be verified by affidavit.

§ 657. Notice presumed—lien filed in sixty days—limitation.] Every railway owner, company, or contractor, and subcontractor upon any railway, shall be deemed to have the notice provided for by the preceding section for a period of sixty days from the last day of the month in which such labor was done, or material furnished, during which period any person who has performed such labor or furnished such material, may file a lien with the clerk of the district court as provided in the preceding section, which lien shall be binding upon the erection, excavation, embankment, bridge, road bed or right of way, and upon all land upon which the same may be situated, to the full value of such labor or material, in the county or judicial subdivision in which the same is filed. In case the lien is sought to be enforced against the owner, the liability shall not be greater than his liability would have been to the owner at the time the labor was performed or material furnished; but the liability of the owner in case actual notice shall be given after the sixty days, shall be the same as provided in this chapter.

§ 658. LIEN IN SIX MONTHS—AFFIDAVIT—STATEMENT.] Every subcontractor may, at at any time within six months after his labor is performed or materials furnished, make a statement thereof in writing, supported by affidavit that the same is just and true, and file the same with the clerk of the district court of the proper county or judicial subdivision, and give notice thereof, with a copy of such statement to the owner, his agent or trustee, and to the contractor; and from and after the service of such notice, his lien therefor, shall have the same force and effect, and be prosecuted in like manner as a lien by the contractor, but shall be enforced against the property only to the extent of the balance due to the contractor at the time of the service of such notice upon the owner, his agent or trustee.

§ 659. IF SETTLEMENT REFUSED.] In case the contractor shall refuse to make and sign such settlement, then the subcontractor may make a just and true statement of the labor done, or things furnished, giving all credits, which he shall present to the owner, his agent or trustee, and shall also within said thirty days file a copy of the same, verified by affidavit, with the clerk of the district court of the county or judicial subdivision in which the building, erection or other improvement is situated, together with a correct description of the property to be charged with the lien.

§ 660. EFFECT OF CERTIFICATE.] The certificate of settlement or statement of the sub-contractor, shall be a justification to the owner in withholding from the contractor the amount appearing thereby to be due the subcontractor until the same has been paid and the owner shall become the surety of the contractor to the subcontractor for the amount due to the extent before provided.

§ 661. SERVICE OF NOTICES.] The notices mentioned in this chapter may be served by any sheriff or constable, and the return thereon shall be received in evidence without further proof.

§ 662. LIENS OF OTHER PERSONS.] Every person, except as has been provided for subcontractors, who wishes to avail himself of the provisions of this chapter, may file with the clerk of the district court of the county or judicial subdivision in which the building, erection or other improvement to be charged with the lien is situated, and within ninety days after all the things aforesaid shall have been furnished or the labor done, a just and true account of the demand due him after allowing all credits, and containing a correct description of the property to be charged with said lien, and verified by affidavit; but a failure to file the same within the time aforesaid shall not defeat the lien, except against purchasers or incumbrancers in good faith, without notice, whose rights accrued after the ninety days and before any claim for the lien was filed.

§ 663. CLERK'S RECORD—ENTRIES.] The clerk of the district court shall indorse upon every account the date of its filing, and make an abstract thereof in a book to be kept by him for that purpose, and properly indorsed, containing the date of its filing, the name of the person filing the lien, the amount of said lien, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

§ 664. PRIORITY OF LIENS.] The liens for labor done or things furnished shall have priority in the order of the filing of the accounts thereof as aforesaid, and shall be preferred to all other liens and incumbrances which may be attached to, or upon said building, erection or other improvement, and to the land on which the same is situated, or either of them, made subsequent to the commencement of said building, erection or other improvement.

§ 665. EXTENT OF LIENS—ON LEASED LAND.] The entire land upon which any such building, erection or other improvement is situated, including that portion of the same not covered therewith shall be subject to all liens created by this chapter, to the extent of all the right, title and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or things furnished, and when the interest owned in said land by such owner of such building, erection or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as it concerns such buildings, erections and improvements, but the same may be sold to satisfy said lien, and be removed within thirty days after the sale thereof by the purchaser.

§ 666. LIEN SUPERIOR TO MORTGAGE WHEN.] The lien for the things aforesaid, or work, shall attach to the buildings, erections or improvements, for which they were furnished or done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien, may have such bilding, erection or other improvement, sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

§ 667. ACTION TO ENFORCE.] Any person having a lien by virtue of this chapter may bring an action to enforce the same in the district court of thecounty or judicial subdivision wherein the property is situated.

§ 668. DEMAND UPON LIENOR.] Upon the written demand of the owner, his agent or contractor, served on the person holding the lien, requiring him to commence suit to enforce such lien; such suit shall be commenced in thirty days thereafter or the lien shall be forfeited.

§ 669. OWNER DEFINED.] Every person for whose immediate use and benefit any building, erection or improvement is made, having the capacity to contract, including guardians of minors or other persons shall be included in the word owner thereof.

§ 670. SATISFACTION OF LIENS—PENALTY.] Whenever a lien has been claimed by filing the same in the clerk's office, and it is afterwards paid, the creditor shall acknowledge the satisfaction thereof on the proper book in such office, or otherwise in writing, and if he neglects to do so for ten days after demand, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

§ 671. SUBCONTRACTOR DEFINED.] All persons furnishing things or doing work provided for by this chapter, shall be considered subcontractors, except such as have therefor contracts directly with the owner, proprietor, his agent or trustee.

LIENS FOR KEEPING AND PASTURING STOCK.

§ 672. WHO HAVE LIEN.] Any farmer, ranchman or herder of cattle, tavern keeper, or livery stable keeper, to whom any horses, mules, cattle or sheep, shall be entrusted for the purpose of feeding, herding, pasturing or ranching, shall have a lien upon said horses, mules, cattle or sheep, for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep, until the said amount is paid: *Provided*, That these provisions shall not be construed to apply to stolen stock.

§ 673. LIEN ONLY AGAINST OWNER.] The provisions of this act shall not be construed to give any farmer, ranchman or herder of cattle, tavern keeper or livery stable keeper, any lien upon horses, mules, cattle or sheep, put into their keeping, for the purposes mentioned in the previous section, when said property was not owned by the person entrusting the same at the time of delivering them into the possession of said farmer, ranchman, herder, tavern keeper or livery stable keeper.

CHAPTER XXXII.

ACTION TO FORECLOSE LIENS ON CHATTELS.

§ 674. WHO MAY MAINTAIN—REQUISITES OF JUDGMENT.] An action to foreclose a lien upon a chattel may be maintained by an innkeeper, boarding house keeper, mechanic, workman, bailee, or other person having a lien at common law or under the statutes of this territory. A judgment in favor of the plaintiff must specify the amount of the lien and direct a sale of the chattel, to satisfy the same and costs, by the sheriff or other officer of the court in like manner as when the sheriff sells personal property under execution, and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the judgment and costs. The judgment must also provide for the payment of the surplus to the owner of the chattel, and for the safe keeping of such surplus if necessary, until it is claimed by him.

§ 675. JUSTICE'S JURISDICTION.] A justice of the peace has jurisdiction of such action, in all cases to enforce liens upon personal property where the amount of the lien claimed is less than one hundred dollars, concurrent with the district court: *Provided*, This chapter shall not be construed to affect any other existing right or remedy to foreclose or enforce a lien upon a chattel.

CHAPTER XXXIII.

DAMAGES FOR INJURIES TO PERSONS AND PROPERTY.

§ 676. LOSS OF LIFE BY RAILROAD.] If the life of any person, not in the employment of a railroad corporation, shall be lost, in this territory, by the reason of the negligence or carelessness of the proprietor or proprietors of any railroad, or by the unfitness, or negligence, or carelessness of their employees or agents, the personal representatives of the person whose life is so lost, may institute suit and recover damages in the same manner that the person might have done for any injury where death did not ensue.

§ 677. WHO MAY SUE—PUNITIVE DAMAGES.] If the life of any person or persons is lost or destroyed by the neglect, carelessness, or unskillfulness of another person or persons, company or companies, corporation or corporations, their or his agents, servants or employes, then the widow, heir, or personal representatives of the deceased shall have the right to sue such person or persons, company or companies, corporation or corporations, and recover punitive damages for the loss or destruction of the life aforesaid.

§ 678. FOR STOCK INJURED.] All railroad corporations in this territory shall pay full damages to the owner or owners of horses and other stock and cattle that they may negligently or carelessly kill or damage by their cars, locomotives, agents or employes, along said railroad or its branches, within the territory of Dakota.

§ 679. PRESUMPTION.] The killing or damaging of any horses, cattle, or other stock, by the cars or locomotive along said railroad or branches, shall be prima facie evidence of carelessness and negligence of said corporation.

§ 680. PROCEEDINGS.] Whenever any horses, cattle, or stock, may be killed or crippled by any train of cars or locomotives upon any railway within this territory, it shall be lawful for the owner of the horses, stock or cattle so killed or crippled, after first giving a station agent of the corporation to which said railway shall belong, written notice of his intention, to apply to a justice of the peace within the county in which said stock may have been killed or crippled, to appoint appraisers to affix a value upon the horses, cattle or stock so killed or crippled, and said justice of the peace shall appoint three discreet and disinterested citizens of the county a board of appraisers, who, after having been duly sworn, shall examine the horses, cattle or stock so killed or crippled, and affix a value upon the same if killed, or assess the damages to the same if crippled, and return to said justice of the peace a written report, describing the horses, cattle or stock, stating whether they were killed or crippled, and also setting out the valuation or assessment of damage made by them;

which report said justice shall preserve as a part of the records of his office.

§ 681. Action if corporation fail.] In case the corporation shall fail, for the space of sixty days, to pay to the owner of the horses, cattle or stock so killed or crippled, the full amount assessed by said board of appraisers, and one-half the costs attending the assessment, the owner shall have the right to institute an action, in any court in the county of competent jurisdiction, on the original cause of action; and if upon the trial of this action the owner recovers a verdict, it shall be the duty of the court to render judgment in the owner's favor for the amount of said verdict, and all costs incurred subsequent to the killing or crippling; but if the owner fails to recover a verdict, the costs of the action shall be taxed against him.

§ 682. Fees.] The justice of the peace and the three appraisers shall receive for their services under this act, each, the sum of one dollar, to be paid equally by the railroad corporation, owner or owners of the horses, cattle or stock, killed or crippled.

PART III.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

CHAPTER XXXIV.

PRELIMINARY PROVISIONS.

§ 683. PARTIES.] The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

§ 684. DEFINITIONS.] A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

WRIT OF CERTIORARI.

§ 685. WHEN AND BY WHOM GRANTED.] A writ of certiorari may be granted by the supreme and district courts, when inferior courts, officers, boards or tribunals have exceeded their jurisdiction, and there is no writ of error or appeal, nor in the judgment of the court, any other plain, speedy and adequate remedy.

§ 686. HOW COMMENCED.] The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

§ 687. TO WHOM WRIT DIRECTED.] The writ may be directed to the inferior court, tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified.

§ 688. REQUISITES OF WRIT.] The writ of certiorari shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings, describing or referring to them, with convenient certainty, that the same may be reviewed by the court; and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

§ 689. STAY OF PROCEEDINGS.] If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

§ 690. SERVICE.] The writ must be served in the same manner as a summons in civil action, except when otherwise expressly directed by the court.

§ 691. EXTENT OF REVIEW.] The review upon this writ cannot be extended further than to determine whether the inferior court, tribunal, board, or officer, has regularly pursued the authority of such court, tribunal, board or officer.

§ 692. RETURN AND HEARING.] If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming or annulling, or modifying the proceedings below.

§ 693. JUDGMENT SENT BELOW.] A copy of the judgment, signed by the clerk, must be transmitted to the inferior court, tribunal, board or officer, having the custody of the record or proceedings certified up.

§ 694. JUDGMENT ROLL.] A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll.

WRIT OF MANDAMUS.

§ 695. BY AND TO WHOM ISSUED.] The writ of mandamus may be issued by the supreme and district courts, to any inferior tribunal, corporation, board or person, to compel the performance of an act, which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

§ 696. WHEN ISSUED.] The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon affidavit, upon the application of the party beneficially interested.

§ 697. ALTERNATIVE OR PEREMPTORY.] The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately upon the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done the command, must be omitted, and a return day inserted.

§ 698. WHEN EACH MAY ISSUE.] When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative writ must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not.

§ 699. ANSWER.] On the return of the alternative writ, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

§ 700. JURY MAY ASSESS DAMAGES.] If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of which allegation the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county or subdivision must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

§ 701. LATITUDE OF PROOF.] On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

§ 702. NEW TRIAL.] The motion for new trial must be made in the court in which the issue of fact is made.

§ 703. TRANSMISSION OF VERDICT.] If no notice of a motion for a new trial be given, or, if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

§ 704. HEARING.] If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue only immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case.

§ 705. DAMAGES—PEREMPTORY WRIT.] If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs execution may issue; and a peremptory mandamus must also be awarded without delay.

§ 706. SERVICE UPON MAJORITY OF BOARD.] The writ must be served in the same manner as summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board was in session or not.

§ 707. DISOBEDIENCE—PUNISHMENT.] When a peremptory mandamus has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation, board or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

WRIT OF PROHIBITION.

§ 708. DEFINITION OF WRIT.] The writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

§ 709. BY WHOM AND WHEN ISSUED.] It may be issued by the supreme and district courts, to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

§ 710. ALTERNATIVE OR PEREMPTORY.] The writ must be alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

§ 711. PROCEEDINGS.] The provisions for the proceeding under the writ of mandamus, except the first three sections thereof, apply to this proceeding.

MISCELLANEOUS PROVISIONS.

§ 712. SUPREME OR DISTRICT JUDGES.] Writs of certiorari, mandamus and prohibition may be issued by any two justices of the supreme court or by a judge of the district court, in vacation, and when issued by a judge of the district court, may be made returnable, and a hearing thereon be had in vacation.

§ 713. RULES OF PRACTICE.] Except as otherwise provided in this chapter, the provisions of part 2, of this code are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

§ 714. NEW TRIALS AND APPEALS.] The provisions of part 2, relative to new trials and appeals, except in so far as they are inconsistent herewith apply to the proceedings mentioned in this chapter.

CHAPTER XXXV.

OF SUMMARY PROCEEDINGS.

CONFESSION OF JUDGMENT WITHOUT ACTION.

§ 715. For what confessed.] A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

§ 716. Verified statement—contents.] A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If the judgment to be confessed be for money due or to become due, it must state concisely the facts out of which the debt arose, and must show that the sum confessed therefor is justly due, or to become due.

3. If the judgment to be confessed be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the amount of such liability.

§ 717. Proceedings in court—execution.] The statement must be presented to the district court or a judge thereof, and if the same be found sufficient, the court or judge shall indorse thereon an order that judgment be entered by the clerk, whereupon it may be filed in the office of the clerk who shall enter in the judgment book a judgment for the amount confessed with costs. The statement and affidavit, with the judgment, shall thenceforth become the judgment roll. Execution may be issued and enforced thereon, in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but shall have endorsed thereon, by the attorney or person issuing the same, a direction to the sheriff to collect the amount due on such judgment, with interest and costs, which amount shall be stated, with interest thereon, and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due, and whenever any further installments become due, execution may, in like manner, be issued for the collection and enforcement of the same.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

§ 718. Requisites of the case.] Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, at a general term, and render judgment thereon, as if an action were pending.

§ 719. JUDGMENT AND ROLL.] Judgment shall be entered in the judgment book, as in other cases, but without costs for any proceeding prior to trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll.

§ 720. WHEN ON CIVIL JUDGMENT.] The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be subject to appeal in like manner.

RELIEF OF PERSONS CONFINED IN JAIL ON CIVIL PROCESS.

§ 721. DISCHARGE AUTHORIZED.] Every person confined in jail on execution issued on judgment recovered in a civil action, shall be discharged therefrom at the end of ten days from his first confinement therein, upon the conditions hereinafter specified.

§ 722. NOTICE OF APPLICATION.] Such person must cause notice in writing to be given to the plaintiff when and where he will apply to the judge of the district court in which the judgment was submitted, for the purpose of obtaining a discharge from his imprisonment.

§ 723. SERVICE OF NOTICE.] Such notice must be served by delivering to and leaving with the plaintiff, his agent or attorney, a copy thereof, at least one day before the hearing of the application, when the plaintiff, his agent or attorney served, live in the town or city where the application is to be heard, to which time of service one day must be added for every twenty miles or fraction thereof, the plaintiff, his agent or attorney served shall reside distant from the place of hearing.

§ 724. HEARING.] At the time and place specified in the notice, such person must be taken under the custody of the sheriff before such district judge and examined on oath concerning his property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such district judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor; and such examination must, at the election of the creditor, be reduced to writing and subscribed and sworn to by the debtor and other witnesses.

§ 725. OATH BY PRISONER.] If, upon such examination, the judge before whom the same is had, shall be satisfied that the prisoner is entitled to his discharge, he shall administer to him the following oath, to-wit:

I.........do solemnly swear [or affirm] that I have not any estate real or personal, to the amount of ten dollars, except such as is by law exempt from levy and sale on execution, and that I have not any other estate, nor have I conveyed, concealed or in any way disposed of any of my property, real or personal, with design to secure the same to my use, to hinder or delay or defraud my creditors. So help me God. [Signed A B.]

§ 726. CERTIFICATE OF DISCHARGE.] After administering the oath, the judge must make a certificate under his hand as follows:

To the sheriff of the county of...., I do hereby certify that ...., confined in your jail upon an execution at the suit of ...., is entitled to be discharged from imprisonment, if he be imprisoned from no other cause.

§ 727. FOREVER EXEMPT.] The jailor, upon receiving such certificate, must forthwith discharge the prisoner, if he be imprisoned from no other cause. The prisoner, after being so discharged, shall be forever exempt from arrest or imprisonment for the same debt, unless he shall have been convicted of having sworn falsely upon his examination, or, in taking the oath herein prescribed.

§ 728. JUDGMENT AGAINST ESTATE.] The judgment against any prisoner who is discharged as herein provided for shall remain in full force against the estate which may then, or at any time after, belong to him. And the plaintiff may take out a new execution against the goods and estate of the debtor, in like manner and with like effect as if he had never been committed in execution.

§ 729. PRISON COSTS.] If the debtor shall undertake to satisfy the execution he shall not be entitled to his discharge from imprisonment until he has paid all the charges for his commitment, and support in prison, in addition to the sum due on the execution and the costs and charges thereon.

§ 730. DISCHARGE BY PLAINTIFF.] The prisoner may at any time be discharged upon the order of the plaintiff in the action, and when so discharged such debtor shall not thereafter be liable to imprisonment again for the same cause of action.

§ 731. EXPENSES ADVANCED.] Whenever a debtor is committed to jail on execution in a civil action, the creditor, or some one in his behalf, must advance to the sheriff or jailor sufficient money to pay for the support of such prisoner from time to time; and in case such creditor shall neglect or refuse to so advance the money for such prisoner's support, upon the sheriff's or jailor's demand, the jailor must, at the expiration of twenty-four hours after such demand, discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the creditor.

§ 732. RECOMMITMENT.] If upon the examination the prisoner shall not be discharged he must be recommitted to jail under the execution, and shall not be again entitled to apply for his discharge from imprisonment as herein provided except upon the ground of newly discovered evidence, or for other good cause shown to the district judge granting the application.

§ 733. APPEALS.] Either party may appeal to the supreme court from the order of the district judge, granting or refusing a discharge from imprisonment, under these provisions, in the same manner as from an order granting, refusing, continuing, or modifying, a provisional remedy.

CHAPTER XXXVI.

CHANGE OF NAMES OF PERSONS AND PLACES.

§ 734. DISTRICT COURT POWER.] The district court shall have the authority to change the names of persons, towns, villages and cities within this territory.

§ 735. PETITION—CONTENTS.] Any person desiring to change his or her name may file a petition in the district court of the county or subdivision in which such person may be a resident, setting forth:

1. That the petitioner has been a bona fide citizen of such county or subdivision for at least six months prior to the filing of the petition.
2. The cause for which the change of the petitioner's name is sought.
3. The name asked for.

And it shall be the duty of the judge of the district court, at any term thereof after the filing of such petition, upon being duly satisfied by proof in open court, of the truth of the allegations set forth in the petition, and that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days previous notice of the intended application has been given in some newspaper printed in such district, to order and direct a change of the name of such petitioner, and to direct that such order be entered by the clerk in the journal of the court.

§ 736. TOWN, VILLAGE OR CITY.] Whenever it may be desirable to change the name of any town, village or city, in any county of the territory, a petition for that purpose may in like manner be filed in the district court of the county or subdivision in which such town, village or city is situated, setting forth the cause why such change of name is desirable, and the name asked to be substituted, and the court being satisfied by proof that the prayer of the petitioners is just, proper and reasonable, and that notice, as in case of the change of names of persons, provided for in the preceding section, has been given, and that two-thirds of the legal voters of such town, village or city, desire such change of name, and that there is no other town, village or city, in the territory of the name asked for, may order and direct such change of name, and direct the clerk to enter such order upon the journal of the court.

§ 737. COSTS—LIMITATION.] All proceedings under this chapter shall be at the cost of the petitioner or petitioners, and judgment may be entered against him or them for costs as in other civil actions: *Provided always*, That any change of name under the provisions of this chapter shall in no manner affect or alter any action or legal proceedings then pending, or any right, title or interest, whatsoever.

CHAPTER XXXVII.

OF BASTARDS.

§ 738. COMPLAINT.] When any woman residing in any county in this territory is delivered of a bastard child, or is pregnant with a child which, if born alive, will be a bastard, a sworn complaint may be made in writing by any person to the district court of the county or judicial subdivision where she resides, stating that fact, and charging the proper person with being the father thereof. The proceedings shall be entitled in the name of the people of the territory against the accused as defendant.

§ 739. SUMMONS.] Upon the filing of the complaint the clerk shall issue a summons against the person so charged, which shall be served as in civil actions.

§ 740. LIEN UPON REALTY.] From the time of the filing of such complaint a lien shall be created upon the real property of the accused in the county or judicial subdivision where the action is pending, for the payment of any money and the performance of any order adjudged by the proper court.

§ 741. ATTACHMENT.] The judge of the district court may order an attachment to issue on such complaint without undertaking, which order shall specify the amount in value of property to be seized under the attachment, and may be revoked at any time by such judge or by the district court on a showing made for the revocation of the same, and on such terms as may be deemed proper in the premises.

§ 742. DISTRICT ATTORNEY PROSECUTES] The district attorney, on being notified of the facts justifying a complaint as contemplated in the first section of this subdivision, or of the filing of such complaint, shall prosecute the action on behalf of the complainant.

§ 743. ISSUE—HOW TRIED.] The issue on the trial shall be "guilty" or "not guilty," and shall be tried as a civil action at law.

§ 744. JUDGMENT.] If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the court may direct, and with the costsof the suit; and the clerk may issue execution for any sum ordered to be immediately paid, and afterwards, from time to time, as it shall be required and necessary to compel compliance with the order of the court.

§ 745. MODIFICATION OF SAME.] The court may at any time, enlarge, diminish, or vacate any order or judgment rendered in the proceeding herein contemplated, on either party and notice to the other.

§ 746. COUNTY MAY PROSECUTE.] In case any bastard becomes a county charge, for the support of which no proceedings have been instituted under the provisions of this subdivision, it shall be the duty of the board of county commissioners to proceed against the father of such bastard, if known, as herein directed.

CHAPTER XXXVIII.

HERD LAW.

§ 747. LIABILITY FOR TRESPASS OF ANIMALS.] Any person owning, or having in his or their charge, or possession, any horses, mules, cattle, goats, sheep or swine, or any such animals, which shall trespass upon any cultivated land, cultivated or uncultivated meadow lands, or young timber, either fenced in or not fenced, belonging to any person or persons other than the owners of such animals, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to any party or parties sustaining such injury for all damages he, she or they, may have sustained by reason of such trespassing aforesaid, to be recovered in a civil action, before any court having jurisdiction thereof, in the county where such damage may have occurred, and the proceedings shall be the same in all respects as in other civil actions, except as herein modified: *Provided*, That no property shall be exempt, except those exemptions made absolute, from seizure and sale under executions issued upon judgments obtained under or by virtue of this chapter.

§ 748. OWNER DEFINED.] Any person occupying or cultivating lands shall be considered the owner thereof in any action under the provisions of the last section.

§ 749. NOTICE OF DAMAGES.] The parties sustaining damage done by animals as mentioned in section 747, before commencing an action thereon shall notify the owner or person having in charge such offending animal or animals, of such damage, the probable amount thereof: *Provided*, He knows to whom such animal or animals belong.

§ 750. CUSTODY OF ANIMALS.] The person suffering damage done by animals as mentioned in section 747, may retain and keep in custody such offending animals until the damage and costs are paid, or until good and sufficient security be given for the same; and whenever any animal or animals are restrained under this chapter, the person restraining the same shall forthwith notify the owner or person in whose custody the same was at the time the tresspass was committed, of the seizure of said animals, providing the owner or person who had the same in charge is known to the person making said seizure.

§ 751. TRIAL—LIEN UPON ANIMALS.] Upon trial of an action under the provisions of section 747, of this chapter, the plaintiff shall prove the amount of damage sustained, and if he has restrained and kept in custody the animals committing such damage, the amount of expense incurred for keeping the offending animals, and any judgment rendered for damages, costs and expenses against the defendant shall be a lien upon the animals committing the damage, and they may be sold and the proceeds applied to the satisfaction of the judgment as in other cases of sale of personal property on execution; but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit, and damage sustained by defendant.

§ 752. UNKNOWN OWNER—SERVICE.] If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, he shall be discharged and the action and the suit may proceed as against a defendant whose name is unknown, and if at the commencement of the action, the plaintiff does not know the name of the owner, or keeper of such offending animals, he may bring suit against a defendant unknown. In such case service shall be made by publishing a copy of the summons with a notice, stating the nature of the action, in a weeekly newspaper, if there be one published in the county; and if not, by posting copies of the summons and notice in three of the most public places within the county, in either case not less than ten days previous to the day of trial.

§ 753. OVERPLUS.] After judgment shall have been rendered against the defendant, unknown as aforesaid, the offending animals shall be sold, as in other civil actions, and after the said judgment and costs have been satisfied, if there is a surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund for the use of the public schools of said county.

§ 754. JUSTICE'S JURISDICTION.] Justices of the peace shall have concurrent jurisdiction with the district court of all actions and proceedings under this chapter, when the damages claimed do not exceed one hundred dollars.

Approved, February 17, 1877.

CHAPTER XXXIX.

MILL DAMS AND MILLS.

AN ACT to Encourage the Erection of Mill Dams and Mills. [Chapter LI, laws of 1862-3.]

§ 1. RIGHT STATED.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* When any person may be desirous of erecting and maintaining a mill dam upon his own land, across any watercourse not navigable, and shall deem it necessary to raise the water by means of such dam, or occupy ground for mill yard, so as to damage by overflowing or otherwise, real estate not owned by him, nor damaged by consent, he may obtain the right to erect and maintain said dam, by proceeding as in this act provided.

§ 2. PETITION—CONTENTS.] He shall present to the judge of any court of record in which jury trials are had in the county, or, if there be no such court in the county, then in the district in which said dam or any part thereof is to be located, a petition setting forth the place as near as may be, where said dam is to be located, the height to which it will be raised, the purposes to which the water power will be applied, and such other facts as may be necessary to show the objects of the petition.

§ 3. COMMISSIONERS APPOINTED.] Upon the presentation of such petition, the judge shall appoint three disinterested residents of the county, in which said dam or a part of it is to be erected, commissioners to meet at the place of its proposed erection, on a day specified by such judge, and to inquire, touching the matters contained in said petition, and the judge shall fix the fees of said commissioners.

§ 4. OATH.] Before entering upon their duties, the commissioners shall severally take and subscribe an oath before some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

§ 5. NOTICE OF MEETING.] At the request of the petitioner, the commissioners shall give, or cause to be given, notice of the time, place, and object of their meeting to every person named by said petitioner.

§ 6. TIME AND MANNER OF NOTICE.] At least five days notice shall be given in all cases, and in cases of infants, such notice shall be served on their guardians, or on persons with whom they reside; in case of idiots, lunatics, or distracted persons, or their guardians, if they have any, and if not, then on the person under whose care or charge they may be found; in cases of femmes covert on the husband as well as the femme covert; but notices to non-residents of the county or counties where said dam or a part of it is to be located, shall be published in some newspaper in the county aforesaid, or the one nearest thereto, for three weeks in succession, previous to the meeting of said commissioners.

§ 7. EXAMINATION AND ASSESSMENT.] The commissioners shall meet at the time and place specified in the notice, and shall proceed to examine the point at which said dam is proposed to be erected, and the lands and real estate above and below, which will probably be injured by the erection of said dam; shall hear the allegations and testimony of all parties interested, and shall proceed to make a separate assessment of damages which will result to any person by the erection of said mill dam and its maintenance forever.

§ 8. REPORT.] Within thirty days after completing their examination, the commissioners shall file the petition, their appointment, jurats (oaths), and a report of their proceedings, in the office of the clerk of the court in the first section of this act mentioned, and shall give notice of the filing of said report as of their meeting.

§ 9. DAMAGES—HOW PAID.] Upon the filing of said report the petitioners may make payment of the damages assessed to the parties entitled to the same in the manner following, to-wit:

First—To parties laboring under no disability.

Second—To guardians of infants, husbands or trustees of femmes covert.

Third—To guardians or conservators of insane persons.

And receipts for such payment filed in the office of the clerk aforesaid, shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the territory, but not in the county or counties where said dam or part of it is to be erected, as well as to the infants who have no guardian, and insane persons who have no guardians or conservators, and payments to parties residing out of the territory, and to persons whose names are unknown, and to persons who shall refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county or counties aforesaid, who shall pay out the same upon the order of the commissioners or court, take receipts for all payments, and file the same with the order, in the office of the clerk of the court aforesaid, and such deposit shall have the same effect as the first mentioned receipts unless an appeal be taken by the party entitled thereto.

§ 10. APPEALS, BY WHOM.] Appeals from the assessments made by the commissioners may be taken and prosecuted in the court aforesaid, by any party interested, (the petitioner excepted) not under legal disability, by husbands or trustees of femmes covert, guardians of infants, guardians or trustees of insane persons, and in cases where infants or insane persons have no guardians or conservators, appeals may be taken by the friend of such parties, and a written notice of such appeal be served upon the appellee, as a summons in ordinary civil actions: *Provided*, That no appeal shall be taken after the expiration of thirty days from the time of the notification of the filing of the report aforesaid.

§ 11. BOND BY PETITIONER.] The erection of said dam shall not be hindered, delayed or prevented, by the prosecution of any appeal: *Provided*, The petitioner shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with surety or sureties, conditioned that the person executing the same shall pay whatever amount is required by the judgment of the court, and abide any rule or order of the court in relation to the matter in controversy.

§ 12. BOND BY APPELLANT.] The appellant shall file with the clerk aforesaid a bond with security, to be approved by said clerk, in double the amount of the assessment appealed from, payable to the people of the territory, for the use of all persons interested, in the condition in which bond the proceeding appealed from shall be recited, with condition for the due and speedy prosecution of the appeal, and that he or they will satisfy the judgment that may be rendered in the premises and pay the costs of the appeal, if adjudged to do so by the court in reference to the matter in controversy.

§ 13. TRIAL OF APPEAL.] Appeal shall bring before the court the propriety of the amount of damages reported by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the matter shall be submitted to and tried by a jury as other appeal cases, and the court or jury as the case may be, shall assess the damages aforesaid, making the verdict conform to the question and facts in the case.

§ 14. ACTUAL DAMAGE ONLY.] No exemplary or vindictive damages shall be allowed by the commissioners, court or jury.

§ 15. JUDGMENT.] Upon verdicts rendered by juries, or an assessment by the court, judgment shall be entered, declaring that upon payment of the damages assessed by the court or jury, as the case may be, and costs, if any, the right to erect and maintain the mill dam aforesaid, according to the petition, shall, as against the parties interested in such verdict, be and remain in the petitioner, his heirs and assigns forever, subject to be lost as hereinafter provided, and payments of such judgments made as payments of assessments, by the commissioners, as hereinbefore provided.

§ 16. OTHER IMPROVED POWERS.] No mill dam shall be erected or maintained under the provisions of this act to the injury of any water power previously improved.

§ 17. LIMITATION OF ACTIONS.] No action for damages, occasioned by the erection and maintenance of a mill dam, shall be hereafter sustained unless such action be brought within two years after the erection of said dam: *Provided*, That such limitation shall not run against or apply to persons living on and holding government land under the pre-emption laws, until a patent for the land damaged or overflown shall have been issued.

§ 18. DAMS PREVIOUSLY BUILT.] Any person may obtain a right to maintain or raise a dam heretofore erected upon his own land, across any watercourse not navigable, by complying with the provisions of this act, adapting his petition to the nature of the case.

§ 19. PROCEEDINGS SUSPEND SUITS.] Upon the evidence of the commencement of proceedings, as provided in the second and eighteenth sections of this act, the court before which any suit for damages occasioned by such mill dam shall be instituted after the commencement aforesaid, shall have power to suspend any such suit until the result of such proceedings shall be known.

§ 20. PETITIONER PAYS COSTS.] The costs of all proceedings under this act, except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeal shall be paid as the court may direct.

§ 21. ENTRY AUTHORIZED.] For the purpose of making surveys and examinations relating to any proceedings under the provisions of this act, it shall be lawful to enter upon any land, doing no unnecessary injury.

§ 22. LOSS OF RIGHT.] Any person having obtained right to erect and maintain, or to maintain or raise any dam, under the provisions of this chapter, who shall not within one year thereafter begin to build, if he has not previously built said dam, and finish the same, and apply the water power thereby created to the purposes stated in his petition, within three years; or in case the said dam and mills connected therewith shall be destroyed, shall not begin to rebuild in one year after such destruction, and finish in three years, or having erected such mills shall fail to keep them in operation for one year at any one time, shall forfeit all rights acquired by virtue of the provisions of this act, unless at the time of such destruction the owner be an infant, or otherwise disabled in law, in which case the same time shall be allowed after the removal of such disability.

§ 23. EFFECT.] This act shall take effect and be in force from and after its passage and approval by the governor.

Approved January 7, 1863.

PROBATE CODE.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

TITLE I.

PROCEEDINGS IN PROBATE COURTS.

CHAPTER I.

JURISDICTION.

§ 1. JURISDICTION AND POWERS.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the probate court has jurisdiction, and the judge thereof power, which must be exercised in the cases, and in the manner prescribed by statute:

1. To open and receive proof of last wills and testaments, and to admit them to proof, and to revoke the probate thereof, and to allow and record foreign wills.
2. To grant letters testamentary, of administration and of guardianship, and to revoke the same.
3. To appoint appraisers of estates of deceased persons.
4. To compel executors, administrators and guardians to render accounts.
5. To order the sale of property of estates, or belonging to minors.
6. To order the payment of debts due from estates.
7. To order and regulate all distributions of property or estates of deceased persons.
8. To compel the attendance of witnesses and the production of title deeds, papers and other property of an estate, or of a minor.
9. To exercise all the powers conferred by this chapter or by other law.
10. To make such orders as may be necessary to the exercise of the powers conferred upon it.

11. To appoint and remove guardians for infants, and for persons insane or otherwise incompetent; to compel payment and delivery by them of money or property belonging to their wards, to control their conduct and settle their accounts.

§ 2. CONSTRUCTION AND EFFECT OF PROCEEDINGS.] The proceedings of this court are construed in the same manner, and with like intendments, as the proceedings of courts of general jurisdiction, and to its records, orders, judgments and decrees, there are accorded like force, effect, and legal presumptions as to the records, orders, judgments and decrees of district courts.

§ 3. SERVICE OF PROCESS] All process issued by the probate court shall be served in the same manner, and by the persons and officers as provided for the service of process of the district court, with the same fees.

§ 4. WHEN JUDGE DISQUALIFIED.] When the judge of the probate court is a party to any proceeding therein, or connected by blood or affinity to any person so interested nearer than the fourth degree, or is personally interested in the conduct or event of any probate matter or proceeding, or when he is named as a legatee or devisee, or executor, or trustee in a will, or is a witness thereto, he shall be disqualified to act therein, and it shall be disposed of as follows:

1. He shall call the county clerk, who shall in such cases be substituted for and have power to act in place of the judge of the probate court; and such acts of the county clerk while acting as judge of the probate court, shall be binding upon all parties interested therein, and the record shall set forth the occasion of his substitution, and show by his official signature the proceedings had, and the acts done by and before him.

2. Whenever in such cases the probate of any will, the appointment of any executor, administrator or guardian, or any other probate act, is resisted, and any issue of law or fact is joined, the said issue, and all the papers and records relating thereto, shall be sent to the district court for the county or judicial subdivision which shall have full jurisdiction of the same, and it shall be tried and determined and the necessary judgment and order made by that court, and all the proceedings had and the judgments and orders made therein shall be entered by the clerk of said court in the record of the probate court, and returned, together with all the papers, to the probate court; and the clerk of the district court is entitled to charge and receive the same fees as for like services in the district court, and the county clerk the same fees as the judge of the probate court in like cases.

§ 5. JURISDICTION RESUMED.] Under the substitution or transfer of jurisdiction provided in the last section, the law and the rights of parties shall in all other respects be and remain the same; and if, before the issues so transferred are decided, or the administration of such estate is closed, another person be elected or appointed and qualified as judge of the probate court, who is not disqualified to act in the settlement of the estate, he must resume full jurisdiction of the case, and upon notice to that effect from the judge of the probate court, the clerk of the district court must return all papers and records to the probate court.

§ 6. JUDGE'S POWERS.] A judge of the probate court, as contra-distinguished from the probate court, may exercise out of court all the powers expressly conferred upon him as a judge.

§ 7. VENUE OF PROBATE ACTS.] Wills must be proved, and letters testamentary or of administration granted:

1. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died.

2. In the county in which the decedent may have died, leaving estate therein, he not being a resident of the territory.

3. In the county in which any part of the estate may be, the decedent having died out of the territory, and not resident thereof at the time of his death.

4. In the county in which any part of the estate may be, the decedent not being a resident of the territory, but dying within it, and not leaving estate in the county in which he died.

5. In all other cases, in the county where application for letters is first made.

§ 8. IN EITHER COUNTY.] When the estate of the decedent is in more than one county, he having died out of the territory, and not having been a resident thereof at the time of his death, or being such non-resident and dying within the territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

§ 9. TERRITORIAL EXCLUSIVE JURISDICTION.] The probate court of the county in which application is first made for letters testamentary or of administration in any of the cases above mentioned, shall have jurisdiction co-extensive with the territory in the settlement of the estate of the decedent and the sale and distribution of his real estate, and excludes the jurisdiction of the probate court of every other county.

CHAPTER II.

PROBATE OF WILLS.

ARTICLE I.—PETITION, NOTICE AND PROOF.

§ 10. CUSTODIAN MUST DELIVER.] Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

§ 11. WHO MAY PETITION.] Any executor, devisee or legatee named in any will, or any other person interested in the estate, may at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing, in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the territory, or a nuncupative will.

§ 12. REQUISITES OF PETITION.] A petition for the probate of a will must show:

1. The jurisdictional facts.
2. Whether the person named as executor consents to act, or renounces his right to the letters testamentary.
3. The names, ages and residence of the heirs and devisees of the decedent so far as known to the petitioner.
4. The probable value and character of the property of the estate.
5. The name of the person for whom letters testamentary are prayed.

No defect of form, or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

§ 13. PRESUMED RENUNCIATION.] If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

§ 14. COMPULSORY PRODUCTION OF WILL.] If it be alleged in any petition that any will is in the possession of a third person and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it in the court at the time named in the order. If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may by warrant of the court be committed to the jail of the county, and kept in close confinement until he produces it.

§ 15. HEARING—NOTICE.] When the petition is filed and the will produced, the judge of the probate court must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the judge by publishing the same in a newspaper of the county; if there is none, then by three written or printed notices posted at three of the most public places in the county. If the notice be published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last days being included. If the notice is by posting, it must be given at least ten days before the hearing.

§ 16. HEIRS NOTICED BY MAIL.] Written or printed copies of the notice of the time appointed for the probate of the will, must be addressed to the heirs of the testator resident in the territory, at their places of residence, if known to the petitioner, and deposited in the post-office, with the postage thereon prepaid by the petitioner, at least ten days before the hearing; the notice must be issued by the judge over the seal of the court. Proof of the mailing of the notice must be made at the hearing; the same notice and proof of service thereof on the person named as executor must be made if he be not the petitioner; also on any person named as co-executor, not petitioning, if their place of residence be known.

§ 17. POWERS AT CHAMBERS.] The judge of the probate court may, out of term time or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills, and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting wills to probate.

§ 18. PROOF OF NOTICE—WAIVER.] At the time appointed for the hearing, or at the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will. If such notice is not proved to have been given, or if from any other cause it is necessary, the hearing may be postponed to a day certain, and notice to absentees given thereof, as original notice is required to be given. The appearance in court of parties interested is a waiver of notice.

§ 19. CONTESTANTS.] Any person interested may appear and contest the will. Devisees, legatees or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves, or by the court, for that purpose; but a contest made by an attorney appointed by the court, does not bar a contest, after probate, by the party so represented, if commenced within one year after such probate; nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

§ 20. REQUISITES WHEN NO CONTEST.] If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

§ 21. OLOGRAPHIC—HOW PROVED.] An olographic will may be proved in the same manner that other private writings are proved.

ARTICLE II.—CONTESTING PROBATE OF WILLS.

§ 22. PROCEEDINGS—ISSUES—TRIAL.] If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds of demurrer allowed by law in civil actions. If the demurrer be sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving:

1. The competency of the decedent to make a last will and testament.

2. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud or undue influence.

3. The due execution and attestation of the will by the decedent or subscribing witnesses; or,

4. Any other questions substantially affecting the validity of the will. Must be tried and determined by the court. On the trial the contestant is plaintiff, and the petitioner is defendant.

§ 23. FINDINGS AND CONCLUSIONS—RECORD.] The court, after hearing the case, must give in writing the findings of fact and conclusions of law upon the issues submitted, and upon these the court must render judgment either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses must be reduced to writing. If the will be admitted to probate, the judgment, will, and proofs must be recorded.

§ 24. WITNESSES ON CONTEST.] If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined; and the death, absence or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county, and are not present at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the hand writing of the testator and of the subscribing witnesses, or any of them.

§ 25. TESTIMONY PRESERVED.] The testimony of each witness, reduced to writing and signed by him, shall be taken, kept and filed by the judge, and shall be good evidence in any subsequent contests or trials concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this territory.

§ 26. CERTIFICATE OF PROBATE.] If the court be satisfied upon the proof taken that the will was duly executed, and that the testator was, at the time of the execution thereof, of sound and disposing mind, and not acting under duress, menace, fraud or undue influence, a certificate of the proof and the facts so found, signed by the judge and attested by the seal of the court, must be attached to the will.

§ 27. RECORD OF SAME.] The will and the certificate of the proof thereof, together with all the evidence taken, must be filed by the judge and recorded by him in a book to be provided, at the charge of the county, for that purpose.

ARTICLE III.—PROBATE OF FOREIGN WILLS.

§ 28. WHERE ESTATE CLAIMED.] Every will duly proved and allowed in any other of the territories, or in any of the United States, or the District of Columbia, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate or any estate for which claim is made.

§ 29. PETITION.] When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing, notice whereof must be given as provided for an original petition for the probate of a will

§ 30. REQUISITES OF PROOF.] If, on the hearing, it appears upon the face of the record that the will has been proved, allowed and admitted to probate in any other of the territories, or any state of the United States, the District of Columbia, or in any foreign country or state, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this territory, it must be admitted to probate, be certified in like manner according to the facts, and recorded, and have the same force and effect as a will first admitted to probate in this territory, and letters testamentary or of administration issued thereon.

ARTICLE IV.—CONTESTING WILL AFTER PROBATE.

§ 31. CAUSES—LIMITATIONS.] When a will has been admitted to probate, any person interested therein may at any time within one year after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved a sworn petition in writing containing his allegations, that evidence discovered since the probate of the will, the material facts of which must be set forth, show:

1. That a will of a later date than the one proved by the decedent, revoking or changing the former will, has been discovered; and is offered; or,
2. That some jurisdictional fact was wanting in the former probate; or,
3. That the testator was not competent, free from duress, menace, fraud or undue influence when the will allowed was made; or,
4. That the former will was not duly executed and attested.

§ 32. CITATION TO WHOM.] Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators with the will annexed and to all the legatees and devisees mentioned in the will and heirs residing in the territory so far as known to the petitioner, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

§ 33. OTHER WILL—NOTICE.] If another will be offered by the petition, it must show all that is required in the original case of a petition for the probate of a will, and like notices must be served in the same manner, and upon all the parties as required before the hearing of proof of any will originally: *Provided*, That such notices need not be served on any persons upon whom the citation required in the preceding section is to be served.

§ 34. HEARING—PROOFS.] At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon the persons named therein, and the required publication, posting and service of the notices having been made, and all duly proved, the court must proceed to try the issues joined in the same manner as in an original contest of a will. If upon hearing the proofs of the parties the court shall decide that the will is, for any of the reasons alleged, invalid, or that it is not proved to be the last will of the testator, the probate must be annulled and revoked: and if the court shall decide that the new will is valid, it may admit the same to probate in the same manner as originally upon the probate of a contested will.

§ 35. EFFECT OF REVOCATION.] Upon the revocation being made, the powers of the executor or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

§ 36. COSTS.] The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate be confirmed. If the probate be annulled and revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent as the court directs.

§ 37. PROBATE WHEN CONCLUSIVE.] If no person within one year after the probate of a will, contests the same or the validity thereof the probate of the will is conclusive, saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

ARTICLE V.—PROBATE OF LOST OR DESTROYED WILL.

§ 38. PROCEEDINGS.] Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same, notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, signed by the witnesses, filed and preserved.

§ 39. SPECIAL REQUISITES.] No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

§ 40. STATEMENT OF WILL.] When a lost will is established, the provisions thereof must be distinctly stated and certified by the judge of the probate court, under his hand and the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved; the testimony must be reduced to writing, signed, certified and filed as in other cases, and shall have the same effect as evidence as provided in article II of chapter II.

§ 41. RESTRAINT OF OTHER ACTS.] If before or during the pendency of an application to prove a lost or destroyed will, letters of adminstration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors, so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

ARTICLE VI.—PROBATE OF NUNCUPATIVE WILLS.

§ 42. SPECIAL ADDITIONAL FACTS.] Nuncupative wills may at any time, within six months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided for the probate of wills executed in writing. The petition, in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

§ 43. LIMITATION OF TIME AND FACT.] The probate court must not receive or entertain a petition for the probate of a nuncupative will, until the lapse of fourteen days from the death of the testator, nor must such petition be at any time acted on, unless the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife, if any, and all other persons resident in the territory or county, interested in the estate, are notified, as provided in article I of chapter II.

§ 44. DOUBLE TIME FOR REVOCATION.] Contests of the probate of nuncupative wills and appointments of executors and administrators of the estate devised thereby must be had, conducted and made as hereinbefore provided in cases of the probate of written wills: *Provided*, That double the period allowed for the petition of revocation of the probate of a written will shall be allowed in which to petition for the revocation and annulling of a nuncupative will.

CHAPTER III.

EXECUTORS AND ADMINISTRATORS, THEIR LETTERS, BONDS, REMOVALS AND SUSPENSIONS.

ARTICLE I.—LETTERS TESTAMENTARY AND OF ADMINISTRATION WITH THE WILL ANNEXED, HOW AND TO WHOM ISSUED.

§ 45. EXECUTORS BY THE WILL.] The court admitting the will to probate after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify unless objection be made as provided in the second section following.

§ 46. INCOMPETENCY DEFINED.] No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority.
2. Convicted of an infamous crime.
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

If the sole executor or all the executors are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued.

§ 47. OBJECTIONS TO EXECUTORS.] Any person interested in a will may file objections in writing, to granting letters testamentary to the persons named as executors, or any of them; and the objections must be heard and determined by the court. A petition may, at the same time, be filed for letters of administration, with the will annexed.

§ 48. WOMAN'S MARRIAGE ANNULS.] When an unmarried woman, appointed executrix, marries, her authority is extinguished. When a married woman is named as executrix, she may be appointed and serve in every respect as a femme sole.

§ 49. EXECUTOR'S DEATH.] No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, must be issued.

§ 50. DISQUALIFICATION REMOVED.] Where a person absent from the territory, or a minor, is named executor, and there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee, or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration with the will annexed, must be granted; but the court may, in its discretion, revoke them on the return of the absent executor, or the arrival of the minor at the age of majority.

§ 51. APPOINTMENT OR ACT OF PART.] When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust, required by the will, as effectually for every purpose as if all were appointed and should act together; when there are two executors or administrators, the act of one alone shall be effectual, if the other is absent from the territory, or laboring under any legal disability from serving, or if he has given his co executor or co-administrator authority, in writing, to act for both; and when there are more than two executors or administrators, the act of a majority of them is valid.

§ 52. ADMINISTRATORS SAME POWER.] Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the judge of the probate court, and bear the seal thereof.

ARTICLE II.—FORM OF LETTERS.

§ 53. TESTAMENTARY.] Letters testamentary must be substantially in the following form:

TERRITORY OF DAKOTA, }
COUNTY OF............ }

The last will of A. B, deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ......, C. D., who is named therein, is hereby appointed executor.

Witness, G. H., judge of the probate court of the county of ......, with the seal of the court affixed, the ...... day of ......, A. D., 18..

[Seal, and the official signature of the judge.]

§ 54. OF ADMINISTRATION WITH WILL.] Letters of administration with the will annexed must be substantially in the following form:

TERRITORY OF DAKOTA, }
COUNTY OF............ }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of ......, and there being no executor named in the will [or, as the case may be], C. D. is hereby appointed administrator, with the will annexed.

Witness, G. H., judge of the probate court of the county of ......, with the seal of the court affixed, the ...... day of ......, A. D., 18..

[Seal, and the official signature of the judge.]

§ 55. OF ADMINISTRATION.] Letters of administration must be signed by the judge, under the seal of the court, and substantially in the following form:

TERRITORY OF DAKOTA, }
COUNTY OF............ }

C. D. is hereby appointed administrator of the estate of A. B, deceased.

Witness, G. H., judge of the probate court of the county of ......, with the seal thereof affixed, the ...... day of ......, A. D. 18..

[Seal, and official signature of the judge.]

ARTICLE III.—LETTERS OF ADMINISTRATION—TO WHOM AND THE ORDER IN WHICH THEY ARE GRANTED.

§ 56. WHO ENTITLED—ORDER.] Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. The creditors.
9. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

§ 57. PREFERENCES REQUIRED.] Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole blood to those of the half blood.

§ 58. EQUALLY ENTITLED.] When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

§ 59. TO GUARDIAN OF MINOR.] If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

§ 60. INCOMPETENCY DEFINED.] No person is competent to serve as administrator or administratrix, who, when appointed, is:

1. Under the age of majority.
2. Convicted of an infamous crime.
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

§ 61. WOMEN.] A married woman must not be appointed administratrix. When an unmarried woman, appointed administratrix, marries, her authority is extinguished.

ARTICLE IV. — PETITION AND CONTEST FOR LETTERS AND ACTION THEREON.

§ 62. REQUISITES OF PETITION.] Petition for letters of administration must be in writing, signed by the applicant or his counsel, and filed with the judge of the court stating the facts essential to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and are afterwards proved in the course of administration, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

§ 63. WHEN GRANTED.] Letters of administration may be granted at a regular term of the court or at a special term appointed by the judge for the hearing of the application.

§ 64. NOTICE OF HEARING.] When a petition praying for letters of administration is filed, the judge must give notice thereof containing the name of the decedent, the name of the applicant for letters, and the day and term of the court at which the application will be heard, which notice must be published by posting, or printing in a newspaper, the same as required for notice of the probate of a will.

§ 65. WHO MAY CONTEST—GROUNDS.] Any person interested may contest the petition by filing written opposition thereto on the ground of the incompetency of the applicant, or may assert his own rights to the administration and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

§ 66. HEARING.] On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

§ 67. PROOF OF NOTICE.] An entry in the minutes of the court, that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

§ 68. WAIVER OF BETTER RIGHT.] Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration when such persons fail to appear and claim the issuing of letters to themselves.

§ 69. PROOF OF INTESTACY, PROPERTY, ETC.] Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

§ 70. OTHER APPOINTEES—NON-RESIDENTS.] Administration may be granted to one or more competent persons, although not entitled to the same, at the written request of the person entitled, filed in the court. When the person entitled is a non-resident of the territory, affidavits or depositions taken ex-parte before any officer authorized by the laws of this territory to take acknowledgments and administer oaths out of this territory, may be received as prima facie evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

ARTICLE V.—REVOCATION OF LETTERS AND PROCEEDINGS THEREFOR.

§ 71. WHEN ALLOWED.] When letters of administration have been granted to any person other than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them may obtain the revocation of the letters and be entitled to the administration, by presenting to the probate court a petition praying the revocation, and that letters of administration may be issued to him.

§ 72. ADDITIONAL NOTICE.] When such petition is filed, the judge must, in addition to the notice provided upon petition for letters, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

§ 73. HEARING.] At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

§ 74. PRIOR RIGHTS ASSERTED.] The surviving husband or wife, when letters of administration have been granted to a child, father, mother, brother or sister of the intestate, or any of such relatives when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

ARTICLE VI.—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS.

§ 75. OATH—RECORD.] Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath, before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by executors or administrators, with the affidavits and certificates thereon must be forthwith recorded by the judge in books to be kept by him in his office for that purpose.

§ 76. BOND—FORM—PENALTY.] Every person to whom letters testamentary or of administration are directed to issue, must, before, receiving them, execute a bond to the territory of Dakota, with two or more sufficient sureties, to be approved by the judge of the probate court. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property and twice the probable value of the annual rents, profits and issues of the real property belonging to the estate, which values must be ascertained by the probate judge, by examining on oath the party applying, and any other persons.

§ 77. ADDITIONAL BOND.] The judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or any bond given in place thereof is equal to twice the value of the personal property remaining in, or that will come into the possession of the executor or administrator, including the annual rents, profits, and issues of real estate still belonging to the estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

§ 78. CONDITION OF BOND.] The bond must be conditioned that the executor or administrator, shall faithfully execute the duties of the trust according to law.

§ 79. SEPARATE BONDS.] When two or more persons are appointed executors or administrators, the judge of the probate court must require and take a separate bond from each of them.

§ 80. SUCCESSIVE RECOVERIES.] The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

§ 81. JUSTIFICATION—APPROVAL—RECORD.] In all cases where bonds are required to be given, under this title, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the territory, and are each worth the sum specified in the bond, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the bond exceeds one thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the bond, if the whole amount be equivalent to that of two sufficient sureties, and the affidavits thereof must be attached to, and filed and recorded with the bond. All such bonds must be approved by the judge of the probate court before being filed and recorded.

Before the judge of the probate court approves any bond required under this title, and after its approval he may of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties or some one or more of them are not worth as much as they have justified to, issue a citation, requiring such sureties to appear before him, at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time issue a notice to the executor or administrator, requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination he is satisfied that the bond is insufficient, he must require sufficient additional security.

§ 82. EXAMINATION OF SURETIES.] If sufficient security be not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

§ 83. BOND WAIVED BY WILL.] When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue and sales of real estate be made and confirmed without any bond, unless the court, for good cause, require one to be executed; but the executor may, at any time afterward, if it appears from any cause necessary or proper, be required to file a bond as in other cases.

§ 84. BOND BECOMING INSUFFICIENT.] Any person interested in an estate may, by verified petition, represent to the judge of the probate court that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed or are about to remove from this territory, or that from any other cause the bond is insufficient, and ask that further security be required.

§ 85. SERVICE OF CITATION.] If the judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded or cannot be found, it may be served by leaving a copy of it at his last place of residence, or by such publication as the judge may order.

§ 86. HEARING AND ORDER.] On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form within a reasonable time, not less than five days.

§ 87. REVOCATION FOR DISOBEDIENCE.] If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

§ 88. SUSPENSION OF POWERS.] When a petition is presented praying that an executor or administrator be required to give further security, or to give bond where by the terms of the will no bond was originally required, and it is alleged on oath, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

§ 89. JUDGE MUST INQUIRE.] When it comes to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, the judge of the probate court, without any application, must cite him to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

§ 90. RELEASE OF SURETY.] When a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application by petition to the judge of the probate court for relief. The judge must issue a citation to the executor or administrator, to be served personally upon him, requiring him to appear at a time and place to be therein specified, and give other security. If he has absconded, left, or removed from the territory, or cannot be found after due diligence and inquiry, service may be made as provided when the citation is to require further security.

§ 91. WHEN ALLOWED.] If new sureties be given to the satisfaction of the judge, he may thereupon make and enter an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default or misconduct of the executor or administrator.

§ 92. REVOCATION.] If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the judge must, by order, revoke his letters.

§ 93. HEARINGS OUT OF TERM.] The applications authorized by the nine preceding sections of this chapter, may be heard and determined out of term time; and all orders made therein must be entered upon the minutes of the court.

ARTICLE VII.—SPECIAL ADMINISTRATORS, THEIR POWERS AND DUTIES.

§ 94. WHEN MAY BE APPOINTED.] When there is delay in granting letters testamentary or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies, or is suspended or removed, the judge of the probate court must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

§ 95. HOW APPOINTED.] The appointment may be made out of term time, and without notice, and must be made by entry upon the minutes of of the court, specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the judge must issue letters of administration to such person, in conformity with the order in the minutes.

§ 96. PREFERENCE.] In making the appointment of a special administrator, the judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment.

§ 97. BOND.] Before any letters issue to any special administrator, he must give bond in such sum as the judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual oath and have the same indorsed on his letters.

§ 98. DUTIES OF SPECIAL ADMINISTRATOR.] The special administrator must collect and preserve for the executor or administrator, all the goods, chattels, debts and effects of the decedent, all incomes, rents, issues and profits, claims and demands, of the estate, must take the charge and management of, enter upon and preserve from damage, waste and injury, the real estate, and for such and all necessary purposes may commence and maintain, or defend, suits and other legal proceedings, as an administrator; he may sell such perishable property as the probate court may order to be sold and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent.

§ 99. SUPERCEDED.] When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

§ 100. ACCOUNT.] The special administrator must render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

ARTICLE VIII.—WILLS FOUND AFTER LETTERS OF ADMINISTRATION GRANTED, AND MISCELLANEOUS PROVISIONS.

§ 101. ADMINISTRATION REVOKED.] If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly [proved and allowed by the court, the letters of administration must be revoked, and the power of the [administrator ceases, and he must render an account of his administration within such time as the court shall direct.

§ 102. SUCCESSION TO DUTIES.] In such case, the executor or the administrator with the will annexed, is entitled to demand, sue for, recover, and collect, all the rights, goods, chattels, debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

§ 103. ONE REMAINING COMPLETES DUTY.] In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

§ 104. SUCCESSOR APPOINTED.] If all such executors or administrators die or become incapable, or the power and authority of all of them are revoked, the probate court must issue letters of administration with the will annexed, or otherwise, to the widow, or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

§ 105. RESIGNATION—LIABILITY.] Any executor or administrator may, at any time, by writing, filed in the probate court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released or affected, by such appointment or resignation.

§ 106. PREVIOUS ACTS VALID.] All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administion, are as valid to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

§ 107. PROOF OF APPOINTMENT.] A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the judge under his hand and the seal of his court, that such person has given bond and qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

ARTICLE IX.—REMOVALS AND SUSPENSIONS IN CERTAIN CASES.

§ 108. EMBEZZLEMENT.] Whenever the judge of the probate court has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the territory, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator, until the matter is investigated.

§ 109. SUSPENSION—CITATION.] When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied there exists cause for his removal, his letters must be revoked, and letters of administration granted anew as the case may require.

§ 110. HEARING ISSUES.] At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, as hereinbefore provided, and the court must hear and determine the issues raised.

§ 111. NOTICE BY PUBLICATION.] If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

§ 112. COMPULSORY ATTENDANCE.] In the proceedings authorized by the preceding four sections, for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and upon his refusal to do so, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEDENTS.

ARTICLE I.—INVENTORY, APPRAISEMENT AND POSSESSION OF ESTATE.

§ 113. INVENTORY OF ESTATE.] Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedent, except the homestead, if any, which has come to his possession or knowledge.

§ 114. APPRAISER'S DUTIES—FEES.] To make the appraisement, the judge must appoint three disinterested persons, any of whom may act, who are entitled to receive a reasonable compensation for their services, not to exceed two dollars per day, to be allowed by the court. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the estate is in any other county, the same appraisers may proceed to view and appraise the same, or other appraisers in that county may be appointed to perform that duty, by the judge of the probate court of the county in which the letters were issued, as he may deem best, and the like report must be made in each case direct to the probate court of the county which issued the letters.

§ 115. OATH—INVENTORY—CONTENTS.] Before proceeding to the execution of their duty, the appraisers must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially appraise the property exhibited to them, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite to the articles respectively; the inventory must contain all the estate of the decedent, real and personal, except the homestead, a statement of all debts, partnerships and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest or security.

§ 116. MONEY RECEIVED.] The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator, and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

§ 117. EXECUTOR'S PERSONAL DEBT.] The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

§ 118. BEQUEST TO—CONSTRUED.] The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors, of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

§ 119. RETURN OF INVENTORY.] The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be indorsed upon or annexed to the inventory.

§ 120. REFUSAL—REVOCATION.] If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the judge shall, for a reasonable cause, allow; the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

§ 121. ADDITIONAL INVENTORY.] Whenever property not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this article, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

§ 122. POSSESSION BY REPRESENTATIVE.] The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, except the realty and improvements thereon properly belonging to the homestead, and such personal property as is reserved by law to the widow and children of the decedent, or either of them, until the estate is settled or until delivered over by order of the probate court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting title to the same, against any one except the executor or administrator.

§ 123. TERM OF POSSESSION.] Unless it satisfactorily appears to the probate court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of ten months from the first publication of the notice to creditors, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law, or devisees.

ARTICLE II.—EMBEZZLEMENT AND SURRENDER OF PROPERTY OF THE ESTATE.

§ 124. EMBEZZLEMENT BEFORE LETTERS.] If any person before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

§ 125. COMPLAINT—EXAMINATION.] If any executor, administrator, or other person interested in the estate of a decedent, complains to the probate court, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods or chattels of the decedent, or has in his possession or knowledge, any deeds, conveyances, bonds, contracts, or other writings which contain evidences of, or tend to disclose the right, title, interest or claim of the decedent to any real or personal estate, or any claim or demand, or any lost will, the judge may cite such person to appear before the probate court, and may examine him, on oath, upon the matter of such complaint, if he can be found in the territory. But if cited from another county, and he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

§ 126. COMMITMENT—DISCLOSURE.] If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings, tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim or demand, or any lost will of the decedent, the probate court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the probate court. The order for such disclosure made upon such examination, is prima facie evidence of the right of such administrator to such property in any action brought for the recovery thereof; and any judgment recovered therein, must be for double the value of the property as assessed by the district court or jury, or for return of the property, and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

§ 127. ACCOUNT BY THIRD PERSONS.] The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

OF THE HOMESTEAD, AND OF THE ALLOTMENT OF PERSONAL PROPERTY.

§ 128. PROPERTY IMMEDIATELY DELIVERED TO FAMILY.] Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law; and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age. [See chapter 38 of the political code, page 183.] And in addition thereto the following personal property must be immediately delivered by the executor or administrator to such surviving wife or husband, and child or children, and is not to be deemed assets, namely:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.

4. The family bible and all school books used by the family; and all other books used as a part of the family library not exceeding in value one hundred dollars.

5. All wearing apparel and clothing of the decedent and his family.

6. The provisions for the family necessary for one year's supply, either provided or growing, or both; and fuel necessary for one year.

The executor or administrator must make a separate and distinct inventory of all the personal property specified in this section, by articles, and opposite each article give the appraised value of the same, in dollars and cents, as given in the general inventory of the appraisers appointed by the court and return the same to the probate court, and no such property shall be liable for any prior debts or claims whatever.

§ 129. ADDITIONAL ALLOTMENT.] In addition to the property mentioned in the preceding section, there shall also be allowed and set apart to the surviving wife or husband, or the minor child or children of the decedent, all such personal property or money as is exempt by law from levy and sale on execution or other final process from any court, to be, with the homestead, possessed and used by them; and the executor or administrator must make and return a separate and distinct inventory thereof in the same manner as required for the property mentioned in the preceding section, and no such property shall be liable for any prior debts or claims against the decedent, except when there are no assets thereunto available for the payment of the necessary expenses of his last illness, funeral charges and expenses of administration.

§ 130. SELECTION OF HOMESTEAD.] If no homestead has been selected, marked out, platted and recorded, as provided by the homestead law, the judge of the probate court must cause the same to be done according to the provisions of said law.

§ 131. SAME EXEMPT.] The homestead is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except as provided in the law relating to homesteads.

§ 132. FAMILY ALLOWANCE.] If the amount so as aforesaid set apart be less than that allowed, and insufficient for the support of the widow and children, or either, or, if there be no such personal property to be set apart, and if there be other estate of the decedent, the court may in its discretion make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

§ 133. SAME—PREFERRED CLAIM.] Any allowance made by the court in accordance with the provisions of this chapter must be paid in preference to all other charges, except funeral charges or expenses of administration; and any such allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

§ 134. WHO RECEIVES PROPERTY.] When personal property is set apart for the use of the family, in accordance with the provisions of this chapter, if the decedent left a widow or surviving husband, and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child, the one-half of such property shall belong to the widow or surviving husband, and the other half to the minor child; and if the decedent left more than one minor child, the one-third of such property shall belong to the widow or surviving husband and the remainder in equal shares to the minor children, and if the decedent left no widow or surviving husband, such property shall belong to the minor child, or, if more than one minor child, to them in equal parts.

§ 135. SUMMARY ADMINISTRATION.] If, upon the return of the inventory of the personal estate of an intestate, it appears that the value of the whole personal estate does not exceed the sum of fifteen hundred dollars, the probate court, by a decree for that purpose, must assign for the use and support of the widow and minor child or children, if there be a widow or minor child, and if no widow, then for the children if there be any, the whole of the estate, after the payment of the funeral expenses, the expenses of the last sickness, and expenses of the administration, and there must be no further proceedings in the administration unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of three thousand dollars, it is in the discretion of the probate court to dispense with the regular proceedings or any part thereof prescribed in this chapter, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters; the notice to creditors must be given to present their claims within four months after the first publication of such notice, and those not so presented are barred as in other cases.

§ 136. WIDOW'S SEPARATE PROPERTY.] If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this subdivision, the whole property so set apart, other than her right in the homestead, must go to the minor children.

CHAPTER VI.

OF CLAIMS AGAINST THE ESTATE.

§ 137. NOTICE TO CREDITORS.] Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the judge shall direct, but not less than once a week for four weeks. The judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation.

§ 138. PERIODS ALLOWED.] The time expressed in the notice must be six months after its first publication, when the estate exceeds in value the sum of five thousand dollars, and four months when it does not.

§ 139. PROOF, APPROVAL AND RECORD OF NOTICE.] After the notice is given, as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed, and upon such affidavit or other testimony to the satisfaction of the court, an order or decree, showing that due notice to creditors has been given must be made by the court and entered in the minutes and recorded.

§ 140. CLAIMS NOT PRESENTED BARRED—EXCEPTIONS.] If a claim arising upon a contract heretofore made, be not presented within the time limited in the notice, it is barred forever, except as follows: If it be not then due, or if it be contingent, it may be presented within one month after it becomes due or absolute; if it be made to appear by the affidavit of the claimant, to the satisfaction of the executor or administrator and the judge of the probate court, that the claimant had no notice as provided in this chapter, by reason of being out of the territory, it may be presented at any time before a decree of distribution is entered; a claim for a deficiency remaining unpaid after a sale of property of the estate mortgaged or pledged must be presented within one month after such deficiency is ascertained. All claims arising upon contracts hereafter made, whether the same be due, not due or contingent, must be presented within the time limited in the notice; and any claim not so presented is barred forever: *Provided, however*, That when it is made to appear by the affidavit of the claimant, as above provided, that he had no notice by reason of being out of the territory, it may be presented as therein provided.

§ 141. PROOF OF CLAIMS.] Every claim which is due when presented to the administrator must be supported by the affidavit of the claimant or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the claimant or affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate is insolvent, no greater rate of interest shall be allowed upon any claim, after the first publication of notice to creditors, than is allowed by law on judgments obtained in the district court.

§ 142. HOW ALLOWED NOT PROVED.] When it shall appear, upon the settlement of the accounts of any executor or administrator, that debts against the deceased have been paid without the affidavit and allowance prescribed by the preceding section, and shall be proven by competent evidence to the satisfaction of the probate court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

§ 143. CLAIM BY PROBATE JUDGE.] Any judge of the probate court may present a claim against the estate of a decedent, for allowance, to the executor or administrator thereof; and if the executor or administrator allows or rejects the claim, he must, in writing, present the same to the county clerk of the county, who shall thereupon be substituted in the settlement of said estate in place of the probate judge, as provided by law, and the judge of the probate court presenting such claim, in case of its rejection by the executor or administrator, or by such county clerk, acting as judge, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

§ 144. ALLOWANCE AND REJECTION OF CLAIMS.] When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to the judge for his approval, who must, in the same manner, indorse upon it his allowance or rejection. If the executor or administrator, or the judge refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, is prima facie evidence of such presentation and rejection. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

§ 145. CLAIMS FILED IN COURT.] Every claim allowed by the executor or administrator, and approved by the judge, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien which has been recorded or filed according to law in the office of the register of deeds of the county in which the land affected by it lies, it is sufficient to describe the mortgage or lien, and refer to the date of its filing and volume, and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy of the same has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the judge in the register, showing the name of the claimant, the amount and character of the claim; rate of interest, and date of allowance.

§ 146. SUIT ON REJECTED CLAIM.] When a claim is rejected, either by the executor or administrator, or the judge of the probate court, the holder must bring suit in the proper court, to-wit: before a justice of the peace or in the district court, according to its amount, against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

§ 147. CLAIMS BARRED—EXAMINATION.] No claim must be allowed by the executor or administrator, or by the judge, which is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may, in his discretion, examine the claimant and others, on oath, and hear any other legal evidence touching the validity of the claim.

§ 148. PRESENTMENT REQUIRED.] No holder of any claim against an estate shall maintain any action thereon, unless the claim is first presented to the executor or administrator.

§ 149. VACANCY IN ADMINISTRATION.] The time during which there shall be a vacancy in the administration, must not be included in any limitation herein prescribed.

§ 150. ACTIONS PENDING AT DEATH.] If an action is pending against the decedent at time of his death, the plaintiff must in like manner present his claim to the executor or administrator, for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentation required.

§ 151. PARTIAL ALLOWANCE.] Whenever any claim is presented to an executor or administrator, or to the judge of the probate court, and he is willing to allow the same in part, he must state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in an action therefor, brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

§ 152. EFFECT OF JUDGMENT.] A judgment rendered against an executor or administrator in the district court or before a magistrate, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge of the probate court, and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment must be filed in the probate court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

§ 153. JUDGMENTS BEFORE DEATH—HOW COLLECTED.] When any judgment has been rendered for or against the testator or intestate in his lifetime, no execution shall issue thereon after his death, except:

1. In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interests.

2. In case of the death of the judgment debtor, if the judgment be for

the recovery of real or personal property, or the enforcement of a lien thereon.

A judgment against the decedent for the recovery of money, must be presented to the executor or administrator, like any other claim. If the execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof, and the officer making the sale must account to the executor or administrator for any surplus in his hands.

§ 154. DEATH AFTER VERDICT.] A judgment rendered against a decedent, dying after verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

§ 155. REFERENCE OF CLAIM.] If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the judge of the probate court, upon filing the agreement and approval of the judge of the probate court, in the office of the clerk of the district court for the county, or judicial subdivision, in which the letters testamentary or of administration were granted, the clerk must, either in vacation or in term, enter a minute of the order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the probate court; and the report of the referee, if confirmed, establishes or rejects the claim, the same as if it had been allowed or rejected by the executor or administrator and the probate judge.

§ 156. REFEREE'S DUTIES.] The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court theron shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

§ 157. COSTS AGAINST REPRESENTATIVE.] When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

§ 158. CLAIM BY.] If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the judge of the probate court, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If, however, the judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the judge of the probate court, who may appoint an attorney at the expense of the estate, to defend the action. If the claimant recover no judgment he must pay all costs, including defendant's attorney's fee.

§ 159. NEGLECT TO GIVE CREDITORS NOTICE.] If an executor or administrator neglect for two months after his appointment to give notice to creditors, as prescribed by this subdivision, the court must revoke his letters, and appoint some other person in his stead, equally, or next in order, entitled to the appointment.

§ 160. STATEMENT OF CLAIMS.] At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently presented to him. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

§ 161. PAYMENT OF CLAIMS NOT DUE.] If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the probate court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to debts existing at the date this law goes into effect, unless the creditor consent to accept the amount.

CHAPTER VII.

OF SALES AND CONVEYANCES OF PROPERTY OF DECEDENTS.

ARTICLE I.—OF SALES IN GENERAL.

§ 162. PROPERTY CHARGEABLE.] All the property of a decedent, except as otherwise provided for the homestead and personal property set apart for the surviving wife or husband and minor child or children, shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family. And the property, personal and real, may be sold as the court may direct, in the manner hereinafter prescribed. There shall be no priority as between personal and real property for the above purposes.

§ 163. COURT ORDERS ALL SALES.] No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise hereinafter provided. All sales must be reported under oath, and confirmed by the probate court, before the title to the property sold passes.

§ 164. PETITIONS FOR ORDERS.] All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and upon the hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

§ 165. BUT ONE SALE.] When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate, of every character, chargeable therewith, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in cases of perishable property, which may be sold as provided in the next section. The probate court, when a petition for the sale of any property, for any of the purposes herein named, is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate chargeable therewith than sufficient to pay the same, may require but one proceeding for the sale of the entire available estate. In such case the petition must set forth all the facts required by section 172.

ARTICLE II.—SALES OF PERSONAL PROPERTY.

§ 166. WHAT SOLD WITHOUT NOTICE.] At any time after receiving letters, the executor, administrator, or special administrator may apply to the judge and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice; but the executor, administrator or special administrator, is responsible for the property, unless, after making a sworn return, and on a proper showing the court shall approve the sale.

§ 167. PRE-REQUISITES TO SALES.] If claims against the estate have been allowed, and a sale of property is necessary for their payment, or the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notce of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appear for the best interest of the estate, he may, at any time after filing the inventories, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, remaining and not set apart, whether necessary to pay debts or not.

§ 168. PARTNERSHIP AND CLAIMS.] Partnership interests, or interests belonging to any estate by virtue of any partnership formerly existing, interest in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

§ 169. CAUSES FOR SALES—WHAT SOLD.] If it appear that a sale is necessary for the payment of debts or the family allowance, or for the best interest of the estate, and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, must be first sold and the court or judge must so direct.

§ 170. METHOD AND NOTICE OF SALE.] The sale of personal property must be made at public auction, and after public notice given for at least fifteen days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold; unless for good reasons shown, the court or judge orders a private sale, or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property, which is not present at the time of sale, unless the court or judge otherwise order.

ARTICLE III.—SALES OF REAL ESTATE, INTERESTS THEREIN, AND CONFIRMATIONS THEREOF.

§ 171. WHEN SALE NECESSARY.] When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against a decedent, or the debts, expenses or charges of administration, or legacies, the executor or administrator may also sell any real, as well as personal property of the estate, in his hands and chargeable for that purpose, upon the order of the probate court; and an application for the sale of real property may also embrace the sale of personal property.

§ 172. REQUISITES OF PETITION FOR SALE.] To obtain an order for the sale of real property, he must present a verified petition to the probate court, or to the judge thereof, setting forth the amount of personal property that has come into his hands as assets, and how much thereof, if any, remains undisposed of; the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all the real property, except the homestead, of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof; the names of the legatees and devisees, if any, and the heirs of the decedent, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary, will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

§ 173. ORDER FOR HEARING.] If it appears to the court or judge, from such petition, that it is necessary to sell the whole or some portion of such real estate for the purposes and reasons mentioned in the preceding section or any of them, such petition must be filed and an order thereupon made, directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

§ 174. SERVICE ON WHOM—WAIVER.] A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper of the county as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with and the hearing may be had at any time.

§ 175. HEARING, UNLESS WRITTEN CONSENT.] The probate court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proof of the petitioners, and of persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

§ 176. COMPULSORY ATTENDANCE.] The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the judge of the probate court in the same manner and with like effect as in other cases.

§ 177. ALL REALTY MAY BE SOLD.] If it appear necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interests of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or of any part thereof necessary and for the best interest of all concerned.

§ 178. [illegible] If the court be satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary, for any of the causes mentioned in this article, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial.

§ 179. CONTENTS OF ORDER—TERMS AND METHOD OF SALE.] The order of sale must describe the lands to be sold and the terms of sale, which may be for cash, or may be for one-third cash and the balance on a credit not exceeding two years, payable in gross or in installments within that time, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale; the court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice, by any party interested.

§ 180. PETITION FOR SALE BY OTHERS.] If the executor or administrator neglects to apply for any order of sale when it is necessary, any person may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator, before the hearing. The petition of such applicant must contain as many of the matters required for the petition of the executor or administrator as he can ascertain, and the decree of sale must fix the period of time within which the executor or administrator must make the sale.

§ 181. NOTICE OF SALE.] When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in three of the most public places in the county in which the land is situated, and published in a newspaper if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale. The lands and tenements to be sold must be described with common certainty in the notice.

§ 182. PLACE AND TIME OF SALE.] Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in the notice of sale, unless the same is postponed.

§ 183. PRIVATE SALE—[illegible]—[illegible].] When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county; if none, then in such paper as the court may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the judge of the probate court, to which the return of sale must be made, at any time after the first publication of notice, and before the making of the sale. If it is shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight, days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order.

§ 184. LIMIT OF PRICE—REAPPRAISEMENT.] No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent. of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low appraisers must be appointed, and they must make an appraisement thereof in the same manner as in case of an original appraisement of an estate. This may be done at any time before the sale or the confirmation thereof.

§ 185. SECURITY FOR CREDIT.] The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money with a mortgage on the property to secure their payment.

§ 186. RETURN OF SALE—HEARING—RESALE.] The executor or administrator after making any sale of real estate, must make a return of his proceedings to the probate court, which must be filed by the judge, at any time subsequent to the sale, either in term or vacation. If the sale be made at public auction, and the return is made and filed on or before the first day of the next term thereafter, no notice is required of such return or of the hearing thereof, but the hearing may be had upon the first day of the term, or any subsequent day to which the same may be postponed. If the sale be not made at public auction, or if made at public auction a hearing upon the return of proceedings be asked for in the return, or is brought on for a hearing upon a day before the first day of the next term thereafter, or upon any other day than the first day of the next term after such sale, the court or judge must fix the day for the hearing, of which notice of at least ten days must be given by the judge, by notices posted in three public places in the county, or by publication in a newspaper, or both, as he may deem best, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place; if an offer ten per cent. more in amount than that named in the return be made to the court in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person or to order a new sale.

§ 187. OBJECTIONS TO SALE.] When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections.

§ 188. CONFIRMING ORDER—RESALE.] If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid mentioned in section 231 be made and accepted by the court, the court must make an order confirming the sale, and directing conveyances to be executed. The sale, from that time, is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed must be recorded in the office of the register of deeds of the county within which the land sold is situated. If after the confirmation the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a resale to be made of the property. If the amount realized on such resale does not cover the bid and the expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

§ 189. CONVEYANCE AND RECORD—EFFECT OF.] Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the probate court authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the register of deeds, by the date, volume and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest and estate of the decedent, in the premises, at the time of his death; if, prior to the sale, by operation of law or otherwise, the estate has acquired any right, title or interest in the premises, other than, or in addition to, that of the decedent at the time of his death, such right, title or interest also passes by such conveyance.

§ 190. PROOF BEFORE ORDER.] Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

§ 191. POSTPONEMENT OF SALE.] If at the time appointed for the sale the executor or administrator deems it for the interest of the persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

§ 192. NOTICE OF SAME AT PLACE.] In case of a postponement, notice thereof must be given, by a public declaration, at the time and place first appointed for the sale, and if the postponement be for more than one day further notice must be given by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

§ 193. WILL MUST BE FOLLOWED.] If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

§ 194. SALES UNDER WILL—CONFIRMATION.] When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the probate court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

§ 195. PREFERRED PROPERTY.] If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this article.

§ 196. PROPERTY LIABLE FOR DEBTS, ETC.] The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

§ 197. CONTRIBUTION FROM ALL.] When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the probate court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from their distributive shares respectively, for the purpose of paying such contribution.

§ 198. CONTRACT TO PURCHASE LAND.] If a decedent, at the time of his death was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

§ 199. TERMS OF SUCH SALE.] The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such, the sale must not be confirmed by the probate court until the purchasers execute a bond to the executor or administrator, for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

§ 200. BOND FROM PURCHASER.] The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract.

§ 201. TRANSFER OF TITLE.] Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title and interest of the estate, or of the persons entitled to the interest of the decedent, in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

§ 202. LIENS ON REALTY PAID.] When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien, and the residue if any in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay; and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate which has been presented and allowed is affected by the statute of limitations, pending the proceedings for the settlement of the estate. The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the probate court, to be received by the judge thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the judge without delay, in payment of the expenses of the sale, and in satisfaction of the debt, to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless for good case shown, after notice to the executor or administrator, the judge otherwise directs.

§ 203. LIENOR MAY PURCHASE.] At any sale under order of the probate court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the judge an amount sufficient to pay such expenses.

§ 204. MISCONDUCT OF SALE.] If there is any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

§ 205. FRAUDULENT SALE.] Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this chapter is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

§ 206 ACTIONS TO RECOVER LIMITED.] No action for the recovery of any estate, sold by an executor or administrator under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

§ 207. LEGAL DISABILITIES.] The preceding section shall not apply to minors, or others under any legal disability, to sue at the time when the right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability.

§ 208. ACCOUNT OF SALES.] When a sale has been made by an executor or administrator, of any property of the estate, real or personal, he must return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglect to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

§ 209. REPRESENTATIVE NOT PURCHASER.] No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any sale.

CHAPTER VIII.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATES.

§ 210. POSSESSION, POWERS AND DUTIES.] The executor or administrator must take into his possession all the estate of the decedent, real and personal, except the homestead and personal property not assets, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heir or devisees is subject, however, to the possession of the executor or administrator, for the purposes of administration, as provided in this title.

§ 211. ACTIONS BY AND AGAINST.] Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases and in the same courts in which the same might have been maintained by or against their respective testators or intestates.

§ 212. WASTE AND CONVERSION.] Executors and administrators may in like manner maintain actions against any person who has wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

§ 213. SAME AGAINST REPRESENTATIVES.] Any person, or his personal representatives, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

§ 214. INVENTORY AND BOND BY SURVIVING PARTNER.] When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner shall immediately, in company with the executor or administrator, or some other person or persons, to be appointed by the judge of the probate court, take and furnish to said executor or administrator a correct and full inventory, and a fair and just appraisement, of all partnership property and assets held and belonging to himself and the deceased partner, after which the surviving partner shall settle the business of the co-partnership. The surviving partner shall settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent. Upon the application of the executor or administrator, the judge of the probate court shall in all cases require the surviving partner to give a good and sufficient bond, to be approved by the judge of the probate court, for the honest and faithful disposal of the interest of the decedent in the co-partnership, and the prompt payment of the proceeds thereof over to the executor or administrator, and, in case of neglect or refusal, may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

§ 215. ACTIONS AGAINST PREDECESSOR.] An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

§ 216. JOINDER OF PARTIES.] In actions by or against executors, it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

§ 217. COMPOUNDING DEBTS.] Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the probate judge, may compound with him, and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it appears to be just, and for the best interest of the estate.

§ 218. RECOVERY OF FRAUDULENT CONVEYANCES.] When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his lifetime, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

§ 219. CREDITORS MAY REQUIRE SAME.] No executor or administrator is bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security therefor to the executor or administrator, as the judge shall direct.

§ 220. SALE OF SUCH REALTY.] All real estate so recovered must be sold for the payment of debts, in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent, in the same manner as other property in the hand of the executor or administrator.

CHAPTER IX.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

§ 221. DEEDS BY DECEDENT'S CONTRACT.] When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the probate court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

§ 222. PETITION FOR AND NOTICE.] On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the probate judge must appoint a time and place for hearing the petition, at a regular term of court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this territory as he may designate.

§ 223. HEARING.] At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

§ 224. DECREE.] If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

§ 225. DEED AND RECORD—EFFECT.] The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the register of deeds of the county where the lands lie, and is prima facie evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

§ 226. DISMISSAL AND APPEAL.] If, upon hearing in the probate court, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in the district court to enforce a specific performance thereof.

§ 227. EFFECT OF CONVEYANCE.] Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

§ 228. DECREE GIVES POSSESSION.] A copy of the decree for a conveyance, made by the probate court, and duly certified and recorded in the office of the register of deeds of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the conveyance, in like manner as if they had been conveyed in pursuance of the decree.

§ 229. ENFORCING DECREE.] The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

§ 230. DEATH OF CLAIMANT.] If the person entitled to the conveyance die before the commencement of proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent may, for the benefit of the person so entitled, commence such proceedings, or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator, for their benefit.

§ 231. SURRENDER ORDERED BY DECREE.] The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed, and a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER X.

OF ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

ARTICLE I.—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

§ 232. REQUISITES OF CONTRACT BY REPRESENTATIVE.] No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

§ 233. WITH WHAT PROPERTY CHARGED.] Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of such estate.

§ 234. NEITHER PROFIT NOR LOSS.] He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any part be sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

§ 235. UNCOLLECTED DEBTS.] No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

§ 236. PAY FOR SERVICES AND EXPENSES.] He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as are provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless by a written instrument, filed in the probate court, he renounces all claim for compensation provided by the will.

§ 237. NOT PURCHASE CLAIMS.] No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

§ 238. FEES AND COMMISSIONS.] When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, excluding all property not ranked as assets, as follows: For the first thousand dollars, at the rate of five per cent.; for all above that sum, and not exceeding five thousand dollars, at the rate of four per cent.; for all above that sum, at the rate of two and one-half per cent.; and the same commission must be allowed adminstrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable, for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section.

ARTICLE II.—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

§ 239. FULL STATEMENT.] At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants, and all other matters necessary to show the condition of its affairs.

§ 240. CITATION UPON FAILURE.] If the executor or administrator fail to render an exhibit at the third term of the court, the judge of the probate court must issue a citation requiring him to appear and render it.

§ 241. PETITION FOR BY THIRD PERSON.] Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

§ 242. ACTION UPON SAME.] If the judge be satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must issue a citation to the executor or administrator, requiring him to appear at some day named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

§ 243. CONTEST OF EXHIBIT.] When an exhibit is rendered by an executor or administrator, any person interested may appear and, [by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

§ 244. COMPULSORY ATTENDANCE.[If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him and such exhibit enforced, or his letters may be revoked, in the discretion of the court.

§ 245. FULL ACCOUNT IN ONE YEAR.] Every executor or administrator must render a full account and a report of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, the court must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment must issue unless a citation has been first issued, served and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered must exhibit not only the debts which have been paid, but also a statement of all the debts which have been duly presented and allowed during the period embraced in the account.

§ 246. ACCOUNT TO SUCCESSOR.] When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the probate court at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

§ 247. REVOCATION.] If the executor or administrator resides out of the county, or absconds, or conceals himself, so that the citation cannot be personally served, and neglects to render an account within thirty days after the time prescribed in this article, or if he neglects to render an account within thirty days after being committed where the attachment has been executed, his letters must be revoked.

§ 248. VOUCHERS TO ACCOUNT.] In rendering his account, the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

§ 249. ITEMS WITHOUT VOUCHERS.] On the settlement of his account he may be allowed any item of expenditure, not exceeding fifteen dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath reduced to writing and certified by the judge, positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed three hundred dollars against any one estate, nor over ten per cent. of the inventory appraised value of any estate under three thousand dollars.

§ 250. NOTICE FOR SETTLEMENT.] When any account is rendered for settlement, the court or judge must appoint a day for the settlement thereof; the judge must thereupon give notice thereof, by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account, which must be on some day of a term of the court. The court or judge may order such further notice to be given as may be proper.

§ 251. REQUISITES FOR NOTICE OF FINAL SETTLEMENT.] If the account mentioned in the preceding section be for a final settlement, and the estate be ready for distribution, the notice of the settlement must state these facts, and must be served, published or waived in the same manner as provided for sales of real property and interests therein; and on confirmation of the final account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. If, from any cause, the hearing of the account, or the partition and distribution be postponed, the order postponing the same to a day certain is notice to all persons interested therein.

§ 252. EXCEPTIONS TO ACCOUNT.] On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

§ 253. WHAT HEIRS MAY CONTEST—HEARING.] All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

§ 254. EFFECT OF ALLOWANCE.] The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of such account is prima facie evidence of its correctness.

§ 255. PROOF OF NOTICE—DECREE.] The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

§ 256. PERSONALTY SOLD WHEN.] Whenever it appears to the court on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

§ 257. INVESTMENTS OF FUNDS.] Pending the settlement of any estate on the petition of any party interested therein, the probate court may order any moneys in the hands of the executor or administrators to be invested for the benefit of the estate, in securities of the United States. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the judge.

ARTICLE III.—THE PAYMENT OF DEBTS OF THE ESTATE.

§ 258. ORDER OF PAYMENT.] The debts of the estate must be paid in the following order:

1. Funeral expenses.
2. The expenses of the last sickness.
3. Debts having preference by the laws of the United States.
4. Judgments rendered against the decedent in his lifetime, and mortgages, in the order of their date.
5. All other demands against the estate.

§ 259. LIMIT AS TO MORTGAGE.] The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied must be classed with other demands against the estate.

§ 260. EQUAL WITHIN CLASSES.] If the estate be insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any class shall receive any payment until all those of the preceding class are fully paid.

§ 261. WHEN CERTAIN EXPENSES PAID.] The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this article, the payment has been ordered by the court.

§ 262. ORDER FOR PAYMENT OF DEBTS.] Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there be not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole assets of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge, on producing and filing the necessary vouchers and proofs showing that such payments have been made, and that he has fully complied with the decree of the court.

§ 263. ADVANCE PAYMENTS—SOLVENCY.] If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

§ 264. LIABLE FOR DEBTS ORDERED PAID.] When a decree is made by the probate court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decrees, as upon judgment in the district court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator is liable therefor, on his bond, to each creditor.

§ 265. OTHER LIABILITY.] When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to creditors as required in the first and second sections of chapter VI, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

§ 266. EXTENSION OF TIME.] If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

§ 267. FINAL ACCOUNT AND SETTLEMENT.] At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account, and pray a settlement of his administrator.

§ 268. PROVISIONS APPLYING TO.] If he neglect to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

CHAPTER XI.

OF THE PARTITION, DISTRIBUTION, AND FINAL SETTLEMENT OF ESTATES.

ARTICLE I.—PARTIAL DISTRIBUTION PRIOR TO FINAL SETTLEMENT.

§ 269. PETITION FOR LEGACY OR SHARE.] At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate.

§ 270. NOTICE TO REPRESENTATIVE.] Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

§ 271. WHO MAY RESIST.] The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee or legatee may make a similar application for himself.

§ 272. WHEN PETITION ALLOWED—CONDITIONS—PARTITION.] If at the hearing it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

1. Each heir, legatee or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the probate judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

2. The executor or administrator to deliver to the heir, legatee or devisee the whole portion of the estate to which he may be entitled, or only a part thereof, designating it.

If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings to be paid by the applicant, or if there be more than one, to be apportioned equally amongst them.

§ 273. ASSESSMENT AGAINST LEGATEE OR DEVISEE.] When any bond has been executed and delivered, under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

ARTICLE II.—DISTRIBUTION AND FINAL SETTLEMENT.

§ 274. COURT DISTRIBUTES—DECEASED HEIR—SETTLEMENT.] Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance, must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

§ 275. DECREE OF DISTRIBUTION—CONTENTS—EFFECT.] In the order or decree, the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees, subject only to be reversed, set aside, or modified on appeal.

§ 276. DELIVERY TO EXECUTOR UNDER FOREIGN WILL.] Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this territory, leaving a will which has been duly proved or allowed in the state, territory or district of his residence, and an authenticated copy thereof has been admitted to probate in this territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this territory should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed in this territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the probate court.

§ 277. PETITION AND NOTICE FOR DECREE.] The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

§ 278. TAXES PAID [illegible].] Before any decree of distribution of an estate is made, the probate court must be satisfied, by the oath of the executor or administrator, or otherwise, that all territorial, county, school and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

ARTICLE III.—DISTRIBUTION AND PARTITION.

§ 279. PARTITION BY THREE COMMISSIONERS.] **When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees or legatees, is in common and undivided, and the respective shares are not** separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate court or judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority, and is governed by the same rules as if three were appointed.

§ 280. PETITION FOR AND NOTICE.] Such partition may be ordered and had in the probate court, on the petition of any person interested. But before commissioners are appointed, or partition ordered by the probate court as directed in this subdivision, notice thereof must be given to all persons interested, who reside in this territory, or their guardians, and to the agents, attorneys, or guardians, if any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given, at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

§ 281. REALTY IN DIFFERENT COUNTIES.] If the real estate is in different counties, the probate court may, if deemed proper, appoint commissioners for all, or different commissioners for each county. The whole estate, whether in one or more counties, shall be divided among the heirs, devisees, or legatees as if it were all in one county, and the commissioners must, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this territory.

§ 282. WHEN PART CONVEYED.] Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

§ 283. HOW SHARES SET APART.] When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

§ 284. [illegible].] When the real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and among children preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party, then to the satisfaction of his guardian, and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

§ 285. WHOLE TO ONE PARTY—EXCESS PAID.] When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

§ 286. SALE OF WHOLE.] When it appears to the court, from the commissioners' report that it cannot be otherwise fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commission appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported and confirmed in the same manner and under the same requirements as provided in article III, chapter VII of this title.

§ 287. NOTICE TO ALL BEFORE PARTITION.] Before any partition is made, or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary, to enable them to form a judgment upon the matters before them.

§ 288. REPORT BY COMMISSIONERS—CONFIRMATION—RECORD.] The commissioners must report their proceedings and the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the judge, under the seal of the court, must be recorded in the office of the register of deeds of the county where the lands lie.

§ 289. RESIDUE ASSIGNED.] When the probate court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

§ 290. ADVANCEMENTS—CONTENTS OF DECREE.] All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the probate court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the probate court, or in case of an appeal, of the district court or supreme court, is binding on all parties interested in the estate.

ARTICLE IV.—AGENTS FOR ABSENT PARTIES—DISCHARGE OF EXECUTOR OR ADMINISTRATOR.

§ 291. AGENT FOR NON-RESIDENT.] When any estate is assigned or distributed by a judgment or decree of the probate court, to any person residing out of and having no agent in this territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate as well as to act for such absent person in the distribution.

§ 292. BOND BY AGENT—PAY.] The agent must first give a bond to the probate judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

§ 293. SALE OF SUCH PROPERTY.] When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court must be paid into the territorial treasury. When the payment is made, the agent must take from the treasury duplicate receipts, one of which he must file in the office of the territorial auditor, and the other in the probate court.

§ 294. AGENTS ACCOUNT—REQUISITES.] The agent must render to the probate court appointing him, annually, an account, showing:

1. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.
2. The income derived therefrom.

3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

4. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid.

When filed the probate court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the territorial treasury, to be receipted for and the receipts filed as in like cases before provided.

§ 295. LIABILITY ON BOND.] The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

§ 296. CLAIMANT FOR PROPERTY.] When any person appears and claims the money paid into the treasury, the probate court making the distribution must inquire into such claim, and, being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him the territorial auditor must draw a warrant on the treasurer for the amount.

§ 297. DECREE DISCHARGING REPRESENTATIVE.] When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

§ 298. SUBSEQUENT PROPERTY DISCOVERED.] The final settlement of an estate as hereinbefore provided, shall not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper for any cause that letters should be again issued.

CHAPTER XII.

OF ORDERS, DECREES, PROCESS, MINUTES, RECORDS, TRIALS, AND APPEALS.

ARTICLE I.—ORDERS, DECREES, PROCESS, MINUTES, RECORDS AND TRIALS.

§ 299. REQUISITES—RECORD.] Orders and decrees made by the probate court, or the judge thereof, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the court or judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this title. All orders and decrees of the court or judge must be entered at length in the minute book of the court, and upon the close of each regular or special term the judge must sign the same.

§ 300. PUBLICATION—HOW.] When any publication is ordered, such publication must be made daily or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this title. The court or judge may, however, order a less number of publications during the period.

§ 301. NOTICE IMPARTED BY RECORDED DECREE.] When it is provided in this title that any order or decree of a probate court or judge, or a copy thereof, must be recorded in the office of the county register of deeds, from the time of filing the same for record notice is imparted to all persons of the contents thereof.

§ 302. CITATIONS—REQUISITES OF.] Citations must be directed to the person to be cited, signed by the judge, and issued under the seal of the court, and must contain:

1. The title of the proceeding.
2. A brief statement of the nature of the proceeding.
3. A direction that the person cited appear at a time and place specified.

§ 303. SERVICE OF.] The citation must be served in the same manner as a summons in a civil action.

§ 304. PERSONAL NOTICE.] When a personal notice is required, and no mode giving it is prescribed in this title, it must be given by citation.

§ 305. TIME OF SERVICE.] When no other time is specially prescribed in this title, citations must be served at least five days before the return day thereof.

§ 306. DESCRIPTION OF REALTY.] When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale, or notice of a petition for the confirmation thereof. It is sufficient to refer to the description contained in the publication of the first notice, as being proved and on file in the court.

§ 307. TRIALS—FINDINGS—JUDGMENTS—EXECUTIONS.] All issues of facts joined in the probate court must be tried by said court, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant After the hearing the court shall give, in writing, the findings of fact and conclusions of law. Judgments thereon, as well as for costs, may be entered and enforced by execution or otherwise, by the probate court, as in civil actions. If the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and upon which the court may render judgment.

§ 308. ATTORNEYS APPOINTED BY COURT.] At or before the hearing of petitions and contests for the probate of wills; for letters testamentary or of administration; for sales of real estate and confirmations thereof; settlements, petitions, and distributions of estates; and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent in all such proceedings the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the territory, and those interested, who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee to be fixed by the court for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause it become necessary, the probate court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

§ 309. DECREE RECORDED IN REGISTER'S OFFICE.] When a judgment or decree is made, setting apart and defining the homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the register of deeds of the county in which the real property is situated.

§ 310. REVOCATION FOR CONTUMACY.] Whenever an executor, administrator, or guardian is committed for contempt, in disobeying any lawful order of the probate court or the judge thereof, and has remained in custody for thirty days without obeying such order or purging himself otherwise of the contempt, the probate court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person, entitled thereto, executor, administrator or guardian, in his stead.

§ 311. SERVICE UPON GUARDIAN.] Whenever an infant, insane or incompetent person, has a guardian of his estate residing in this territory, personal service upon the guardian of any process, notice, or order of the probate court concerning the estate of a deceased person, in which the ward is interested, is equivalent to service upon the ward; and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

ARTICLE II.—OF APPEALS AND BONDS.

§ 312. DECISIONS FROM WHICH APPEALS LIE.] An appeal may be taken to the district court from a judgment, decree or order of the probate court:

1. Granting, or refusing, or revoking letters testamentary or of administration, or of guardianship.
2. Admitting, or refusing to admit, a will to probate.
3. Against or in favor of the validity of a will, or revoking the probate thereof.
4. Against or in favor of setting apart property, or making an allowance for a widow or child.

5. Against or in favor of directing the petition, sale or conveyance of real property.

6. Settling an account of an executor or administrator, or guardian.

7. Refusing, allowing or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy or distributive share; or,

8. From any other judgment, decree or order of the probate court, or of the judge thereof, affecting a substantial right.

§ 313. WHO MAY APPEAL.] Any party aggrieved may appeal as aforesaid, except where the decree or order of which he complains, was rendered or made upon his default.

§ 314. SAME.] A person interested in the estate or fund affected by the decree or order, who was not a party to the special proceeding in which it was made, but who was entitled by law to be heard therein, upon his application; or who has acquired, since the decree or order was made, a right or interest which would have entitled him to be heard, if it had been previously acquired; may also appeal as prescribed in this article. The facts, which entitle such a person to appeal, must be shown by an affidavit, which must be filed with the notice of appeal.

§ 315. PERIOD IN WHICH APPEAL TAKEN.] An appeal by a party, or by a person interested who was present at the hearing, must be taken within ten days, and an appeal by a person interested, who was not a party and not present at the hearing, within thirty days, from the date of the judgment, decree, or order appealed from.

§ 316. APPEAL HOW TAKEN.] The appeal must be made:

1. By filing a written notice thereof with the judge of the probate court stating the judgment, decree, or order appealed from, or some specific part thereof, and whether the appeal is on a question of law, or of fact, or of both, and, if of law alone, the particular grounds upon which the party intends to rely on his appeal; and,

2. By executing and filing, within the time limited in the preceding section, such bond as is required in the following sections.

It shall not be necessary to notify or summon the appellee or respondent to appear in the district court, but such respondent shall be taken and held to have notice of such appeal in the same manner as he had notice of the pendency of the proceedings in the probate court.

§ 317. BOND—REQUISITES OF.] The appeal bond shall be in such sum as the judge of the probate court shall require and deem sufficient, with at least two sufficient sureties to be approved by the judge, conditioned that the appellant will prosecute his appeal with due diligence to a determination, and will abide, fulfill and perform whatever judgment, decree or order may be rendered against him in that proceeding by the district court, and that he will pay all damages which the opposite party may sustain by reason of such appeal, together with all costs that may be adjudged against him.

§ 318. STAY—EFFECT OF APPEAL.] If the judgment, decree or order appealed from be for, or direct, the payment of money, or the delivery of any property, or grant leave to issue an execution, the appeal shall not stay the execution thereof, unless the appeal bond be furthermore conditioned to the effect that if the judgment, decree or order, or any part thereof be affirmed, or the appeal be dismissed, the appellant shall pay the sum so directed to be paid or levied, or, as the case may require, shall deliver the property so directed to be delivered, or the part thereof as to which the judgment, decree or order shall be affirmed.

§ 319. SAME—BOND.] An appeal from any judgment, decree or order directing the commitment of any person, does not stay the execution thereof unless the appeal bond be also to the effect that if the judgment, decree or order appealed from be affirmed, or the appeal be dismissed, the appellant shall, within twenty days after such affirmance or dismissal, surrender himself in obedience to the judgment, decree or order, to the custody of the sheriff to whom he was committed. If the condition of such bond be violated, it may be prosecuted in the same manner and with the same effect as an administrator's official bond; and the proceeds of the action must be paid or distributed, as directed by the probate court, to or among the persons aggrieved, to the extent of the pecuniary injuries sustained by them, and the balance, if any, must be paid into the county treasury.

§ 320. JUSTIFICATION BY SURETIES—NEW BOND.] The sureties in every appeal bond must justify in the manner required in article VI of chapter III of this title; and the respondent may apply to the appellate court or the judge thereof, upon notice, for an order requiring the appellant to increase the sum fixed by the judge of the probate court, or to give additional security; and if the applicant make default in giving a new bond, pursuant to an order to increase the same, or to give additional security, the appeal may be dismissed.

§ 321. FORM OF BOND—ACTION UPON.] Every appeal bond must be to the territory of Dakota; must contain the name and residence of each of the sureties thereto; and must be filed in the probate court. The judge of the probate court may, at any time, in his discretion, make an order, authorizing any person aggrieved to bring an action on the bond in his own name or in the name of the territory. When it is brought in the name of the territory the damages collected must be paid over to the probate court and therein distributed as justice may require.

§ 322. LETTERS ISSUE NOTWITHSTANDING APPEAL.] An appeal from a decree or order admitting a will to probate, or granting letters testamentary, or letters of administration, does not stay the issuing of letters, where, in the opinion of the probate judge, manifested by an entry upon the minutes of the court, the preservation of the estate requires that such letters should issue. But the letters so issued do not confer power to sell real property by virtue of any provision in the will, or to pay or satisfy legacies, or to distribute the property of the decedent among the next of kin, until the final determination of the appeal.

§ 323. APPEAL DOES NOT STAY—WHEN.] An appeal from a decree or order revoking probate of a will, letters testamentary, letters of administration, or letters of guardianship; or from a decree or order suspending or removing an executor, administrator or guardian, or removing or suspending a testamentary trustee, or a person appointed by the probate court, or appointing an appraiser of personal property, does not stay the execution of the decree or order appealed from.

§ 324. TRANSCRIPT TO DISTRICT COURT—NON-APPEARANCE.] The judge of the probate court must, within ten days from the filing of the notice of appeal and the giving of the required bond, cause a certified copy thereof, and of the judgment decree, or order, or specific part thereof appealed from, and of the minutes, records, papers, and proceedings in the case, to be transmitted to the clerk of the district court of the county or judicial subdivision to be filed in his office; and the appeal may be heard and determined at any day thereafter by said court, at any general, special or adjourned term; and if the appellant make no appearance when the case is called for trial, or otherwise fail to prosecute his appeal, the respondent may, on motion, have the appeal dismissed, or may open the record and move for an affirmance.

§ 325. PARTIES NAMED—POWERS OF APPELLATE COURT.] The plaintiff in the probate court shall be the plaintiff in the district court; and when the appeal is on questions of law alone, the appellate court may reverse, affirm or modify the judgment, decree or order, or the part thereof appealed from, and every intermediate order which it is authorized by law to review, in any respect mentioned in the notice of appeal, and as to any or all of the parties, and it may order a new hearing. Upon such appeal, so much of the evidence as may be necessary to explain the grounds, and no more, may be certified into the appellate court.

§ 326. TRIAL DE NOVO OF FACT BY COURT.] When the appeal is on questions of fact, or on questions of both law and fact, the trial in the district court must be de novo, and shall be conducted in the same manner as if the case and proceedings had lawfully originated in that court; and such appellate court has the same power to decide the questions of fact which the probate court, or judge, had; and it may, in its discretion, as in suits in chancery, and with like effect, make an order for the trial by a jury of any or all the material questions of fact, arising upon the issues between the parties; and such an order must state distinctly and plainly the questions of fact to be tried.

§ 327. NEGLECT OF PROBATE RECORD.] If the judge of the probate court neglect or refuse to make or transmit such certified copies as are hereinbefore required to be transmitted to the clerk of the district court in cases of appeal, he may be compelled by the district court by an order entered, upon motion, to do so, and he may be fined as for contempt for any such neglect or refusal. A certified copy of such order may be served upon the probate judge by the party or his attorney.

§ 328. DISMISSAL IS AFFIRMANCE—AMENDMENT.] The dismissal of an appeal by the district court, is in effect an affirmance of the judgment, decree or order, appealed from; and when an appellant shall have given, in good faith, notice of appeal, but omits, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings, the appellate court may permit an amendment on such terms as may be just.

§ 329. COSTS—HOW PAYABLE.] Such appellate court may award to the successful party the costs of the appeal; or it may direct that such costs abide the event of a new hearing, or of the subsequent proceedings in the probate court. In either case, the costs may be made payable out of the estate or fund, or personally by the unsuccessful party, as directed by the appellate court; or, if no such direction be given, as directed by the probate court.

§ 330. ENFORCEMENT BY PROBATE COURT.] When a judgment, decree or order, from which an appeal has been taken, is wholly or partly affirmed, or is modified by the judgment rendered by the district court upon such appeal, it must be enforced, to the extent authorized by the latter judgment, by the probate court, in like manner as if no appeal therefrom had been taken; and the district court must direct the proceedings to be remitted for that purpose to the probate court, or to the judge thereof.

§ 331. OFFICIAL BONDS GOOD ON APPEAL.] When an executor or administrator who has given an official bond appeals from a judgment, decree or order, of the probate court or judge, made in the proceedings had upon the estate of which he is administrator or executor, his said bond stands in the place of an appeal bond, and the sureties therein are liable as on such appeal bond.

§ 332. LAWFUL ACTS VALID—WHEN.] When the order or decree appointing an executor, or administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate, performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

CHAPTER XIV.

OF GUARDIAN AND WARD.

ARTICLE I.—GUARDIANS OF MINORS.

§ 333. OF PERSONS AND ESTATES.] The probate court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either, or both of them, of minors who have no guardian legally appointed by will, or deed, and who are inhabitants or residents of the county, or who reside without the territory and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor. Before making the appointment, the judge must cause such notice as he deems reasonable to be given to the relatives of the minor residing in the county, and to any person having care of such minor.

§ 334. WHEN MINOR MAY NOMINATE.] If the minor is under the age of fourteen years, the probate judge may nominate and appoint his guardian. If he is above the age of fourteen years he may nominate his own guardian, who, if approved by the judge, must be appointed accordingly. And the probate court, in appointing a guardian, is to be guided by the considerations named in section 127 of the civil code.

§ 335. WHEN JUDGE MAY APPOINT.] If the guardian nominated by the minor be not approved by the judge, or if the minor resides out of the territory, or if, after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor was under the age of fourteen years.

§ 336. MINOR MAY APPOINT.] When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he has attained that age, may appoint his own guardian, subject to the approval of the probate judge.

§ 337. FATHER OR MOTHER ENTITLED.] The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor.

§ 338. GUARDIAN HAS CUSTODY.] If the minor has no father or mother living competent to have the custody and care of his education, the guardian appointed shall have the same.

§ 339. SAME UNTIL MARRIAGE.] Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority, or marries, or until the guardian is legally discharged.

§ 340. BOND TO MINOR—REQUISITES—LETTERS—OATH.] Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form and constitute a part of every such bond without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward that comes to his possession or knowledge, and to return the same within such time as the judge may order.

2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward.

3. To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs; and at the expiration of his trust to settle his accounts with the probate judge, or with the ward, if he be of full age, or his legal representatives, and to pay

over and deliver all the estate moneys and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto.

Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration; and the oath of the guardian must be indorsed thereon that he will perform the duties of his office, as such guardian, according to law.

§ 341. ADDITIONAL CONDITIONS.] When any person is appointed guardian of a minor, the probate judge may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor. The performance of such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

§ 342. RECORD OF LETTERS AND BOND.] All letters of guardianship issued, and all guardians' bonds executed under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the judge of the probate court having jurisdiction of the persons and estates of the wards.

§ 343. EXTRA EXPENSES.] If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

§ 344. TESTAMENTARY GUARDIAN.] Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

§ 345. GUARDIAN AD LITEM.] Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

ARTICLE II.—GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

§ 346. PETITION AND NOTICE.] When it is represented to the probate court, upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

§ 347. HEARING—APPOINTMENT.] If after a full hearing and examination upon such petition, it appears to the judge of the probate court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

§ 348. POWERS—BOND.] Every guardian appointed as provided in the preceding section, has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged; and he must give bond to such ward, in like manner and with like conditions, as before prescribed with respect to the guardian of a minor.

§ 349. PROCEEDINGS TO DECLARE RESTORATION.] Any person who has been declared insane, or the guardian or any relative of such person, within the third degree, or any friend may apply by petition to the probate court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane. Upon receiving the petition, the judge must appoint a day for the hearing, and cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the petitioner, and in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and examined by the judge on his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

ARTICLE III.—THE POWERS AND DUTIES OF GUARDIANS.

§ 350. PAYMENT OF DEBTS—SALES.] Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided by law for the sale of real estate of decedents.

§ 351. COLLECT AND PAY DEBTS—APPEAR IN COURTS.] Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the probate judge, compound for the same and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend.

§ 352. RULES GOVERNING MANAGEMENT.] Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate. upon obtaining an order of the probate court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

§ 353. MANTENANCE AND SUPPORT.] When a guardian has advanced, for the necessary maintenance, support and education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlement. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education, for his ward, the court may order him to do so, and enforce such order by proper process Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

§ 354. ASSENT TO PARTITION.] The guardian may join in and assent to a partition of the real estate of the ward, whenever such assent may be given by any person.

§ 355. INVENTORY AND ACCOUNT.] Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate of his ward. The inventories and accounts so to be returned or rendered, must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the judge of the probate court, in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

§ 356. SETTLEMENT AT END OF YEAR.] The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his accounts to the probate court for settlement and allowance.

§ 357. ACCOUNT BY ONE OF JOINT GUARDIANS.] When an account is rendered by two or more joint guardians, the probate judge may, in his discretion, allow the same upon oath of any of them.

§ 358. EXPENSES AND PAY.] Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

ARTICLE IV.—THE SALE OF PROPERTY AND DISPOSITION OF THE PROCEEDS.

§ 359. CAUSES FOR SALE.] When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

§ 360. SALE FOR INVESTMENT.] When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

§ 361. PROCEEDS—HOW APPLIED.] If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

§ 362. INVESTMENT—HOW MADE.] If the estate be sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

§ 363. PETITION FOR SALE.] To obtain an order for such sale, the guardian must present to the probate court of the county in which he was appointed guardian, a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

§ 364. HEARING AND ORDER.] If it appear to the court or judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appear that it is necessary or would be beneficial to the ward to sell the personal estate or some part of it, the court must order the sale to be made.

§ 365. SERVICE OF ORDER ON WHOM.] A copy of the order must be personally served on the next of kin of the ward, and on all persons inter ested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper printed in the county, or if there be none printed in the county, then in such newspaper as may be specified by the court or judge in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served personally or by publication.

§ 366. HEARING UPON ORDER.] The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

§ 367. WITNESSES ATTENDANCE.] On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court or judge, in the same manner and with like effect as in cases provided for in the settlement of the estates of decedents.

§ 368. COSTS.] If any person appears and objects to the granting of any order prayed for under the provisions of this article, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

§ 369. ORDER FOR SALE—CONTENTS.] If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

§ 370. BOND BY GUARDIAN.] Every guardian authorized to sell real estate, must, before the sale, give bond to the probate judge, with sufficient surety, to be approved by him, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for in this chapter and chapter VII of this title.

§ 371. REFERENCE TO LAW GOVERNING.] All the proceedings under petition of guardians for sales of property of their wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as provided and required by the provisions of law concerning the estates of decedents unless otherwise specially provided in this chapter.

§ 372. TIME ORDER IN FORCE.] No order of sale granted in pursuance of this article continues in force more than one year after granting the same, without a sale being had.

§ 373. TERMS OF SALE—SECURITY.] All sales of real estate of wards must be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from date of sale, as, in the discretion of the probate judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers bond and mortgage on the real estate sold, with such additional security as the judge deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

§ 374. ORDERS TO INVEST.] The probate court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the probate court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.

ARTICLE V.—NON-RESIDENT GUARDIANS AND WARDS.

§ 375. GUARDIANS FOR NON-RESIDENT WARD.] When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this territory, and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate judge of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

§ 376. POWERS.] Every guardian, appointed under the preceding section, has the same powers and performs the same duties, with respect to the estate of the ward found within the territory, and with respect to the person of the ward, if he shall cease to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

§ 377. BOND—EXCEPTIONS.] Every such guardian must give bond to the ward, in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this territory.

§ 378. FIRST APPOINTMENT EXCLUSIVE.] The guardianship which is first lawfully granted, of any person residing without this territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the probate court of every other county.

§ 379. REMOVAL OF PROPERTY.] When the guardian and ward are both non-residents, and the ward is entitled to property in this territory which may be removed to another territory, state or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the territory, state or foreign country of the residence of the ward, upon the application of the guardian to the judge of the probate court of the county in which the estate of the ward, or the principal part thereof, is situated.

§ 380. APPLICATION FOR—PROOFS—ORDER.] The application must be made upon ten days' notice to the resident executor, administrator or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under the hand of the clerk, judge, surrogate or other authorized officer and the seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment.
2. That he has entered upon the discharge of his duties
3. That he is entitled, by the laws of the territory, state or country of his appointment to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the clerk, judge, surrogate or other authorized officer of the court having jurisdiction in the country of his residence, of the estates of persons under guardianship, or of the highest court of such territory, state or country, that by the laws of such country the applicant is entitled to the custody of the estate of his ward without the appointment of any court.

Upon such application, unless good cause to the contrary be shown, the judge of the probate court must make an order granting to such guardian leave to take and remove the property of his ward to the territory, state or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

§ 381. EFFECT OF ORDER.] Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the probate court the receipt therefor of the foreign guardian of such absent ward.

ARTICLE VI.—GENERAL AND MISCELLANEOUS PROVISIONS.

§ 382. COMPLAINT AGAINST GUARDIAN.] Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, or conveyed away any of the money, goods, or effects or an instrument in writing, belonging to the ward or to his estate, the judge of the probate court may cite such suspected person to appear before him, and may examine and proceed with him on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

§ 383. CAUSE FOR REMOVAL.] When a guardian appointed either by the testator or the probate court or judge, becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided the probate court may appoint another in the place of the guardian who has resigned or has been removed.

§ 384. EVENTS TERMINATE GUARDIANSHIP.] The marriage of a minor ward terminates the guardianship; and the guardian of an insane or other person may be discharged by the judge of the probate court when it appears to him, on the application of the ward or otherwise, that the guardianship is no longer necessary.

§ 385. NEW BONDS.] The judge of the probate court may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

§ 386. BONDS PRESERVED—ACTIONS UPON.] Every bond given by a guardian must be filed and preserved in the office of the probate judge of the county; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

§ 387. WITHIN THREE YEARS—DISABILITIES.] No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

§ 388. RECOVERY OF ESTATE SOLD.] No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

§ 389. MORE THAN ONE GUARDIAN.] The court in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

§ 390. POWERS EXERCISED BY JUDGE OR COURT.] The power conferred upon the probate judge in relation to guardians and wards may be exercised by him at chambers or as the act of the probate court, when holding such: and any order appointing a guardian must be entered as and become a decree of the court. The provisions of this title relative to the estates of decedents, so far as they relate to the practice in the probate or the district courts, apply to proceedings under this chapter.

Approved, January 27, 1877.

JUSTICES' CODE.

AN ACT to Establish a Code of Proceedings in Courts of Justices of the Peace, and to Limit the Jurisdiction of the same.

CHAPTER I.

OF CIVIL PROCEEDINGS IN JUSTICES' COURTS.

ARTICLE I.—OF THE JURISDICTION OF JUSTICES' COURTS.

§ 1. PLACE OF OFFICE.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* Justices of the peace must keep their offices and hold their courts at some place selected by them, in their respective townships and counties, in and for which they may be elected, and these courts are always open for the transaction of business.

§ 2. CIVIL JURISDICTION CLASSIFIED AND LIMITED.] The civil jurisdiction of these courts, within their respective counties, extends:

1. To an action arising on contract, for the recovery of money only, where the sum claimed does not exceed one hundred dollars.

2. To an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where the title or boundary of such real property does not in any wise come in question, and where the damages claimed do not exceed one hundred dollars.

3. To an action for a fine, penalty, or forfeiture, not exceeding one hundred dollars, given by statute or the ordinance of an incorporated city or town.

4. To an action upon a bond or undertaking conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

5. To an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars.

6. To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed one hundred dollars.

7. To actions for forcible entry and detainer, or detainer only of real property, where the title or boundary thereof in no wise comes in question.

§ 3. CRIMINAL JURISDICTION—TO TRY—TO EXAMINE.] These courts shall have criminal jurisdiction to try and determine all cases of misdemeanor, committed within their respective counties, not indictable, where the punishment is a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment. And as to all public offenses which are indictable, they have the power of committing magistrate.

ARTICLE II.—PLACE OF TRIAL.

§ 4. ACTIONS WHERE COMMENCED AND TRIED.] Actions in justices' courts must be commenced, and subject to the right to change the place of trial as hereinafter provided, must be tried in the county where the defendant resides, or in which he may be summoned.

§ 5. CAUSES FOR CHANGE OF PLACE.] The court may at any time before the trial, on motion, change the place of trial in the following cases:

1. Where it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party.

2. Where either party makes and files an affidavit, that he believes he cannot have a fair and impartial trial, before such justice, by reason of the interest, prejudice, or bias of the justice.

3. When from any cause the justice is disqualified from acting.

4. When the justice is sick or unable to act.

§ 6. BUT ONE CHANGE WHEN.] The place of trial cannot be changed on motion of the same party more than once.

§ 7. TO WHERE CHANGED.] When the court orders the place of trial to be changed, the action must be transferred for trial to a justice's court the parties may agree upon; and if they do not so agree, then to another justice's court in the same county.

§ 8. PROCEEDINGS UPON THE CHANGE.] After an order has been made, transferring the action for trial to another court, the following proceedings must be had:

1. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of all the costs that have accrued, and costs of transferring the same to the docket of the other justice, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein.

2. Upon the receipt by him of such papers, the justice of the court to which the case is transferred must issue a notice, stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial.

§ 9. NEW COURT'S JURISDICTION.] From the time the order changing the place of trial is made, the court to which the action is thereby transferred, has the same jurisdiction over it as though it had been commenced in such court.

§ 10. TITLE OR BOUNDARY OF LANDS—DISTRICT COURT.] The parties to an action in a justice's court cannot introduce evidence upon any matter wherein the title to, or boundary of, real property in any wise comes in question; and if it appear from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve the question of title to, or boundary of, real property, in any wise, the justice must suspend all further proceedings in the action, and certify the pleadings, and if any of the pleadings are oral, a transcript of the same from his docket, to the clerk of the district court of the county or subdivision, on the payment by the plaintiff, of one dollar for such transcript, and all costs accrued before such justice; and from the time of filing such pleadings or transcript with the clerk, the district court has over the action the same jurisdiction as if it had been commenced therein.

ARTICLE III.—MANNER OF COMMENCING ACTIONS.

§ 11. HOW COMMENCED.] An action in a justice's court is commenced by the issuing the summons, or by the voluntary appearance and pleading of the parties.

§ 12. PARTIES IN PERSON OR BY ATTORNEY.] Parties in justices' courts, may appear and act in person or by attorney; and any person, except by whom the summons or jury process was served, may act as attorney.

§ 13. INFANT'S APPEARANCE—PLAINTIFF—DEFENDANT.] When an infant is a party, he must appear either by his general guardian, if he have one, or by a guardian appointed by the justice, as follows:

1. If the infant be plaintiff the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, upon the application of a relative or friend.

2. If the infant be defendant, the guardian must be appointed at the time the summons is returned, or before the answer. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age; otherwise the justice must make the appointment.

§ 14. SUMMONS—REQUISITES OF.] The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, name of the county or township in which the action is commenced, and the names of the parties thereto.

2. A sufficient statement of the cause of action, in general terms to apprise the defendant of the nature of the claim against him.

3. A direction that the defendant appear and answer before the justice at his office, at a time specified in the summons.

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum claimed by him, stating it.

5. In other actions, a notice that unless the defendant so appears and answers, the plaintiff will apply to the court for the relief demanded. If

the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

§ 15. TIME FOR DEFENDANT'S APPEARANCE.] The time specified in the summons for the appearance of the defendant, shall in all cases be not less than three nor more than twelve days from its date.

§ 16. WHEN SERVED IN OTHER COUNTY—LIMITATION.] The summons cannot be served out of the county of the justice before whom the action is brought, except where the action is brought upon a joint contract or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant resident of the county, or found therein, in which case the summons may be served upon the other defendants out of the county. When the defendant resides in the county, or is summoned therein, the summons cannot be served within two days of the time fixed for the appearance of the defendant; when he resides out of the county, and the summons is served out of the county, the summons cannot be served within seven days of such time.

§ 17. WHO MAY SERVE SUMMONS—PUBLICATION—CLERK'S CERTIFICATE.] The summons may be served by a sheriff, constable, or any other person not a party to the action, and must be served and returned in same manner as summons in the district court, or in actions of attachment, it may be served by publication; and sections 103 and 104 of the code of civil procedure, so far as they relate to the publication of summons, are made applicable to justices' courts, the word "justice" being substituted for the word "judge" whenever the latter word occurs: *Provided*, That when a summons is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the clerk of the district court, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons.

§ 18. AN HOUR FOR APPEARANCE.] The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than that time unless both parties have appeared, and the justice, being present, is engaged in the trial of another cause.

ARTICLE IV.—PLEADINGS.

§ 19. FORM—MANNER—VERIFICATION.] Pleadings in justice's courts:

1. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.
2. May be oral or in writing.
3. Must not be verified, unless otherwise provided in this chapter.
4. If in writing, must be filed with the justice.
5. If oral, an entry of their substance must be made in the docket.

§ 20. ORDER OF PLEADINGS.] The pleadings are:

1. The complaint by the plaintiff.
2. The demurrer to the complaint.
3. The answer by the defendant.
4. The demurrer to the answer.
5. Reply to the answer.

§ 21. COMPLAINT—WHAT] The complaint in justices' courts is a concise statement of the facts constituting the plaintiff's cause of action.

§ 22. DEMURRER—WHEN.] The defendant may, at any time before answering, demur to the complaint.

§ 23. ANSWER—CONTENTS OF.] The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue; and also a statement, in a plain and direct manner, of any other facts constituting a defense or counter-claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

§ 24. DEMURRER TO ANSWER.] When the answer contains new matter in avoidance, or constituting a defense or a counter-claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

§ 25. PROCEEDINGS ON DEMURRER.] The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint.

2. If the demurrer to a complaint is overruled, the defendant may answer forthwith.

3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time not exceeding two days, as the court may allow.

4. If the demurrer to an answer is overruled, the plaintiff may, if the answer contain new matter, reply forthwith. If the answer does not contain new matter, the action must proceed as if no demurrer had been interposed.

§ 26. AMENDMENTS TO PLEADINGS—TERMS.] Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the court by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will, by the amendment, be rendered necessary, require, as a condition to the allowance of such amendment made after issues joined, the payment of such costs to the adverse party, as he may be put to by reason of such adjournment. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default, taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor.

§ 27. PLEADING TO SAME.] When a pleading is amended, the adverse party may answer or demur to it within such time not exceeding two days, as the court may allow.

ARTICLE V.—ATTACHMENTS.

§ 28. WHEN WRIT TO ISSUE.] In the cases mentioned in section 197 of the code of civil procedure, a writ to attach the personal property of the defendant must be issued by the justice at the time of, or after issuing the summons and before answer. On receiving an affidavit by, or on behalf of the plaintiff, stating the same facts as are required to be stated by the affidavit specified in section 199 of the code of civil procedure.

§ 29. UNDERTAKING BY PLAINTIFF.] Before issuing the writ, the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties in a sum not less than fifty, nor more than three hundred dollars, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

§ 30. REQUISITES OF WRIT.] The writ may be directed to the sheriff or any constable of the county, and must require him to attach and safely keep all the personal property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case, to take such undertaking.

§ 31. SERVICE AND RETURN.] The writ may be served by the sheriff or any constable of the county in which it is issued, and returned in the same manner as warrants of attachments are served and returned in actions in the district court, and with the same force and effect.

ARTICLE VI.—CLAIM AND DELIVERY OF PERSONAL PROPERTY.

§ 32. WHEN DELIVERY CLAIMABLE.] In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and article II, of chapter XI, of the code of civil procedure, is applicable to such claim when made in justices' courts, the powers therein given and duties imposed on sheriffs being extended to constables, and the word "justice" substituted for "judge."

ARTICLE VII.—FORCIBLE ENTRY AND DETAINER.

§ 33. JUSTICE'S JURISDICTION.] Any justice of the peace within his proper county shall have power to inquire in the manner hereinafter specified of all cases of forcible entry and detainer or detainer only of real property.

§ 34. CASES WHERE ACTION LIES.] This action is maintainable:

1. Where a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property of another, and detains the same.

2. Where a party after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in possession; or,

3. Where he by force or by menaces and threats of violence, unlawfully

holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

4. Where a lessee in person or by sub-tenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due; or,

5. Where a party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed.

6. Where a party continues in possession after a judgment in partition, or after a sale under an order or decree of a probate court.

§ 35. NOTICE TO QUIT REQUIRED.] In all cases arising under subdivisions 4, 5 and 6 of the preceding section, three days written notice to quit must be given to the lessee, sub-tenant or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned.

§ 36. LEGAL REPRESENTATIVES.] The legal representatives of a person who might have been plaintiff, if alive, may bring this action after his death.

§ 37. VERIFIED COMPLAINT—VENUE.] The complaint must be in writing, and verified by the plaintiff, his agent or attorney, and the proceedings may be had before any justice of the peace of the county where the premises are situated, and shall be governed by the same rules as other cases before justices of the peace, except as herein modified: *Provided*, That when the title to, or boundary of the real property, in any wise comes in question, the case shall be certified to the district court as in this chapter provided.

§ 38. RETURN DAY—ADJOURNMENT.] The time for appearance and pleading must not be less than two nor more than four days from the time the summons is served on the defendant, and no adjournment or continuances shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety, to be approved by the justice, conditioned for the payment of the rent that may accrue together with the costs, if judgment be rendered against the defendant.

§ 39. JUDGMENT FOR DELIVERY—COSTS.] If the finding of the court or the verdict of a jury be in favor of plaintiff, the judgment shall be for the delivery of the possession to the plaintiff and for costs.

§ 40. THIS ACTION SINGLE—LIMITATION.] An action under the provisions of this article, cannot be brought in connection with any other, nor can it be made the subject of set off; and no execution for possession can be served except in the day time.

§ 41. APPEAL.] An appeal may be taken in the usual way upon giving the undertaking prescribed in article 15 of this chapter, which shall suspend all further proceedings until the action is determined in the district court.

ARTICLE VIII.—JUDGMENT BY DEFAULT.

§ 42. PROCEEDINGS UPON DEFAULT.] When the defendant fails to appear and answer or demur, at the time specified in the summons, or within one hour thereafter, then upon proof of service of the summons, the following proceedings must be had:

1. If the action is based upon a contract and is for the recovery of money or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

2. In all other actions the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum, not exceeding the amount stated in the summons, as appears by such evidence to be just.

§ 43. SAME—DEFAULT PRESUMED.] In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the court.

2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once.

3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

ARTICLE IX.—TIME OF TRIAL AND POSTPONEMENTS.

§ 44. WHEN TRIAL TO COMMENCE—ADJOURNMENTS.] Unless postponed as provided in this article, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

§ 45. COURT MAY POSTPONE TRIAL—CEASES WHEN.] The court may, of its own motion, postpone the trial:

1. For not exceeding one day, if, at the time specified in the summons, or by an order of the court for the trial, the court is engaged in the trial of another action.

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment, or to plead, a postponement is rendered necessary.

3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

§ 46. POSTPONEMENT BY CONSENT.] The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

§ 47. ON APPLICATION BY PARTY—REQUISITES.] The trial may be postponed upon the application of either party, for a period not exceeding sixty days:

1. The party making the application must prove, by his own oath or

otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so.

2. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such advetse party, who is in attendance, may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced; but the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

§ 48. IF LONGER THAN TEN DAYS, UNDERTAKING.] No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the justice, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

ARTICLE X.—TRIALS.

§ 49. ISSUES CLASSIFIED.] Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

§ 50. OF LAW.] An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

§ 51. OF FACT.] An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,
2. Upon new matter in the answer, except an issue of law is joined thereon.

§ 52. LAW BY COURT.] An issue of law must be tried by the court.

§ 53. FACT BY JURY.] An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

§ 54. JURY HOW WAIVED.] A jury may be waived:

1. By consent of parties, entered in the docket.
2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact.
3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

§ 55. FAILURE TO APPEAR.] If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

§ 56. JURY—WHEN DEMANDED—HOW SELECTED.] Where the value in controversy or sum demanded exceeds twenty dollars, either party may demand a jury; and upon such demand, the justice shall write down the names of eighteen persons, residents of the county, and having the qualifications of jurors in the district court, from which list of names each party, the plaintiff beginning, may strike out three names alternately; and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of said list such names; and the justice shall at once issue his venire directed to the sheriff or any constable of the county, commanding him to summon the twelve persons whose names remain upon the list as jurymen.

§ 57. CHALLENGES AND TALESMEN.] Challenges shall be allowed in the same manner and for the same causes as in the district courts in civil actions; and in case the number shall be reduced below twelve by such challenges, or in case any jurors summoned shall fail to attend, the justice shall direct the sheriff or any constable to summon and return forthwith a sufficient number of talesmen, having the qualifications of jurors, to complete the panel. All challenges must be tried in a summary manner by the justice, who may examine the juror challenged, or other witnesses under oath.

§ 58. JURY LESS THAN TWELVE.] Parties may agree that the jury shall consist of a less number than twelve jurors; but an agreement to that effect must be in writing, signed by the parties and filed with the papers in the case, or made in open court, and a minute thereof entered by the justice in his docket.

§ 59. OATH.] The justice shall administer to the jurors the same oath as is prescribed for jurors in civil actions in the district court.

§ 60. PRODUCTION AND INSPECTION OF PAPERS.] When the cause of action or counter-claim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence.

§ 61. GENUINENESS ADMITTED IF NOT DENIED.] If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

ARTICLE II.—JUDGMENTS OTHER THAN BY DEFAULT.

§ 62. BY CONFESSION.] Judgments upon confession may be entered up in any justice's court specified in the confession.

§ 63. OF DISMISSAL—NEW ACTION.] Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter.

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court.

§ 64. JUDGMENT AT ONCE AFTER VERDICT.] When a trial by jury has been had, judgment must be entered by the justice at once, in conformity with the verdict.

§ 65. BY THE COURT.] When the trial is by the court judgment must be entered at the close of the trial.

§ 66. TO RECOVER PERSONAL PROPERTY.] In actions to recover the possession of personal property the judgment must be entered substantially in the form required by section 295 of the code of civil procedure.

§ 67. EXCESS REMITTED.] When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

§ 68. OFFER OF JUDGMENT—COSTS.] If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs; but costs must be adjudged against him, and if he recover, be deducted from his recovery. The offer and failure to accept it cannot be given in evidence, nor affect the recovery otherwise than as to costs.

§ 69. COSTS TO PREVAILING PARTY.] The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

§ 70. TRANSCRIPT OF JUDGMENT.] The justice, on the demand of a party in whose favor judgment is rendered, must give him a certified transcript thereof on the payment to him of all costs accrued before him, and one dollar for such transcript.

ARTICLE XII.—EXECUTIONS.

§ 71. WITHIN FIVE YEARS.] Execution for the enforcement of a judgment of a justice's court may be issued by the justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment, except when it has been taken to the district court on error or appeal, or docketed therein.

§ 73. REQUISITES OF EXECUTION.] The execution must be directed to the sheriff or any constable within the county, and must be subscribed by the justice and bear the date of its delivery to the officer. It must intelligibly refer to the judgment, stating the names of the parties thereto, in whose favor, against whom, the time when, the county where, and the name of the justice before whom the judgment was rendered; and it must be made returnable to the justice within thirty days after its date.

§ 73. ON MONEY JUDGMENT.] An execution issued upon a judgment for a sum of money, must state in the body thereof, the sum actually due upon the judgment, and it must substantially require the officer to satisfy the judgment, together with interest and costs, out of the personal property of the judgment debtor; and to bring the money before the justice by the return day of the execution, to be rendered by the justice to the party who recovered the judgment. If the judgment was rendered for a fine, penalty, or forfeiture of undertakings and bonds, or of recognizances taken or entered in a criminal case, the justice must indorse that fact on the execution.

§ 74. FOR POSSESSION OF PERSONALTY.] An execution issued upon a judgment for the delivery of the possession of personal property, shall substantially require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto; and may, at the same time, require the officer to satisfy any costs or damages recovered by the judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein, if a delivery cannot be had.

§ 75. SAME OF REAL PROPERTY.] An execution issued upon a judgment in an action of forcible entry and detainer or detainer only of real property, shall substantially require the officer to deliver the possession of the premises, particularly describing them, to the party entitled thereto, and may at the same time require the officer to satisfy the costs out of the personal property of the party against whom the judgment was rendered.

§ 76. RENEWAL OF EXECUTION.] An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

§ 77. SALE OF PERSONALTY—POSTED NOTICE ONLY.] The provisions of chapter XIII of the code of civil procedure, relating to the levy and sale or delivery of personal property so far as the same are applicable and not inconsistent with the provisions of this chapter, apply to and govern the levy, sale and delivery of personal property under an execution issued by a justice of the peace. And the constable, when the execution is directed to him, is vested for that purpose with all the powers of the sheriff: *Provided*, That notice shall not be published in a newspaper, but shall be given by posting for ten days in five public places within the county, one of which shall be at the office of the justice issuing the execution.

ARTICLE XIII.—CONTEMPTS IN JUSTICES' COURTS.

§ 78. ACTS WHICH CONSTITUTE, CLASSED.] A justice may punish as for contempt, persons guilty of the following acts, and no other:

1. Disorderly, contemptuous, or insolent behavior towards the justice while holding the court, tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

4. Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

§ 79. SUMMARY PUNISHMENT.] When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made, reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

§ 80. WHEN NOT IN VIEW.] When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may, thereupon, discharge him, or may convict him of the offense.

§ 81. PENALTY LIMITED.] A justice may punish for contempts, by fine or imprisonment, or both; such fine not to exceed, in any case, one hundred dollars, and such imprisonment one day.

§ 82. DOCKET ENTRIES.] The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

ARTICLE XIV.—DOCKETS OF JUSTICES.

§ 83. JUSTICE TO KEEP DOCKET—ENTRIES AND THEIR ORDER.] Every justice must keep a book, denominated a docket, in which he must enter:

1. The title of every action or proceeding.

2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof.

3. The date of the summons, and the time of its return; and if a writ of attachment be issued, a statement of the fact.

4. The time when the parties, or either of them, appear, or their nonappearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

5. Every adjournment, stating on whose application, and to what time.

6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial.

7. The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request.

8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge.

9. The judgment of the court, specifying the costs included, and the time when rendered.

10. The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made; and a statement of any money paid to the justice, when and by whom.

11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

§ 84. WHEN AND HOW ENTERED.] The several particulars in the last section specified, must be entered under the title of the action to which they relate, and unless otherwise in this chapter provided, at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, are prima facie evidence of the facts so stated.

§ 85. INDEX TO DOCKET.] A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

§ 86. RECORDS AND FILES TO SUCCESSOR.] Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

§ 87. WHEN VACANCY, TO OTHER JUSTICE.] If the office of a justice become vacant by his death, removal or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the township or county to be by him delivered to the successor of such justice.

§ 88. POWERS OF JUSTICE RECEIVING—CHANGED COUNTY LINES.] Any justice with whom the docket of his predecessor, or of any other justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come, is, for the purposes of this section, considered the successor of such former justice.

ARTICLE XV.—APPEALS.

§ 89. WITHIN THIRTY DAYS—NOTICE—LAW OR FACT.] Any party dissatisfied with a judgment rendered in a civil action in a justice's court, may appeal therefrom to the district court of the county or subdivision, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the justice, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

§ 90. LAW—STATEMENT OF CASE.] When a party appeals to the district court on questions of law alone, he must, within ten days from the rendition of judgment, prepare a statement of the case, and file the same with the justice. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the justice, and if no amendments be filed, the original statement stands as adopted. The statement thus adopted, or as settled by the justice with a copy of the docket of the justice, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the district court.

§ 91. FACT, OR BOTH—TRIAL ANEW.] When a party appeals to the district court on question of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in the district court.

§ 92. REQUISITES OF APPEAL—COSTS—TRANSCRIPT.] Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice, and all costs accrued before said justice, and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

§ 93. UNDERTAKING FOR STAY—DEPOSIT.] An appeal from a justice's court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money; or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and must be conditioned; when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs; if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the district court. When the action is for the recovery of specific personal property the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recorded against him in said action in the district court, and will obey any order made by the court therein. A deposit of the amount of the judgment, including all costs appealed from, or of the value of the property, including all costs in actions for the recovery of specific personal property, with the justice, is equivalent to the filing of the undertaking; and in such cases the justice must transmit the money to the clerk of the district court, to be by him paid out on the order of the court. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

§ 94. DELIVERY OF POSSESSION—DETAINER—REQUISITES OF UNDERTAKING.] In judgments for the delivery of possession in actions of forcible entry and detainer or detainer only, the execution of the same can not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, or the appeal be dismissed, he will pay all rents for the use and occupation of the property, and all damages from the time of the appeal until the delivery of the possession thereof.

§ 95. ORDER TO STAY EXECUTION.] If an execution be issued, on the filing of the undertaking staying proceedings, the justice must, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

§ 96. POWERS OF DISTRICT COURT ON APPEAL.] Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, affirm or modify the judgment, or any or all the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, upon appeal, the trial must be conducted in all respects as trials in the district court. The provisions of the code of civil procedure as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in that court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed. Judgments rendered in the district court on appeal, have the same force and effect, and may be enforced in the district court in the same manner, as judgments in actions commenced therein, except that when a new trial is granted the case must be remanded and the new trial shall be had in the justice's court.

ARTICLE XVI.—GENERAL PROVISIONS.

§ 97. PROCESS THROUGHOUT COUNTY.] Justices of the peace may issue in any action or proceedings in the courts held by them, any original mesne or final process to any part of the county.

§ 98. WITHOUT BLANK TO BE FILLED.] The summons, execution and every other paper made or issued by a justice, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

§ 99. JUSTICE TO RECEIVE MONEYS] Justices of the peace must receive from the sheriff or constables of their county, all moneys collected on any process or order issued from their courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

§ 100. OTHER JUSTICE MAY HOLD COURT.] In case of the sickness or other disability, or necessary absence of a justice, on a return of a summons, or at the time appointed for a trial, another justice of the same township or county, may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable, may resume jurisdiction.

§ 101. COSTS PREPAID OR SECURED.] Justices shall in all cases require of plaintiff's a deposit of money or an undertaking as security for costs of court before issuing a summons.

§ 102. COSTS TO PREVAILING PARTY.] The prevailing party in civil actions in justices' courts is entitled to costs.

§ 103. CODE OF CIVIL PROCEDURE HOW APPLICABLE.] Justice's courts being courts of peculiar and limited jurisdiction, only those provisions of the code of civil procedure which are in their nature applicable to the organization, powers, and course of proceedings in justice's courts or which have been made applicable by special provisions in this chapter, are applicable to justice's courts and the proceedings therein.

CHAPTER II.

OF CRIMINAL PROCEEDINGS IN JUSTICES' COURTS.

§ 104. COMMITTING MAGISTRATES—LAW APPLYING.] Chapters III, IV, V, VI and VII of the code of criminal procedure, relate to the jurisdiction and duties of justices of the peace as committing magistrates; and direct the mode of proceeding when an information, verified by oath, is laid before them of the commission of a public offense triable on indictment.

§ 105. TO KEEP PEACE.] Chapter III of title II of the same code relates to their jurisdiction and duties in cases of security to keep the peace.

§ 106. SWORN COMPLAINT.] All proceedings and actions before a justice's court, for a public offense of which such court has jurisdiction, to try and determine the same, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

§ 107. WARRANT—FORM.] If the justice of the peace is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

County of............... The Territory of Dakota.

To any Sheriff or Constable of said County:

Complaint upon oath having been this day made before me...................by C. D, that the offense of [designating it generally], has been committed, and accusing E, F. thereof. You are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith, at [naming the place].

Witness my hand at........this........day of........A. D. ....

A. B.

§ 108. IN OTHER COUNTY HOW SERVED.] The warrant may be served in any other county in the manner prescribed by sections 101 and 102 of the code of criminal procedure.

§ 109. CRIMINAL DOCKET.] A docket must be kept by the justice of the peace, in which must be entered each action, and the proceedings of the court therein.

§ 110. PLEA ORAL—EXAMINATION.] The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

§ 111. WHEN CASE TO BE TRIED.] Upon a plea other than a plea of guilty, if the defendant does not demand a trial by jury, or an adjournment or change of venue is not granted, the court must proceed to try the case.

§ 112. CHANGE OF VENUE.] In criminal proceedings in a justice's court, a change of the place of trial may be had at any time before the trial commences, when it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same county.

§ 113. PROCEEDINGS UPON.] When a change of the place of trial is ordered the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

§ 114. POSTPONEMENT OF TRIAL.] Before the commencement of the trial either party may, upon good cause shown, have a reasonable postponement thereof.

§ 115. DEFENDANT'S PRESENCE.] The defendant must be personally present before the trial can proceed.

§ 116. TRIAL JURY.] Before the court hears any testimony upon the trial the defendant may demand a trial by jury. The formation of the jury is provided for in chapter I, article X, of this code.

§ 117. CHALLENGES.] The same challenges may be taken by either party to any individual juror, as on the trial of an indictment for a misdemeanor: but the challenge must in all cases be tried by the court.

§ 118. OATH TO JURY.] The court must administer to the jury the following oath:

You do swear that you will well and truly try this issue between the territory of Dakota and A. B., the defendant, and a true verdict render according to the evidence. So help you God.

Any juror who is conscientiously scrupulous of taking an oath, shall be allowed to make affirmation, substituting for the words "So help you God," at the end of the oath, the words "This you do affirm, under the pains and penalties of perjury."

§ 119. JURY'S DUTY.] After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

§ 120. COURT DECIDES LAW—NO CHARGE.] The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

§ 121. JURY'S CONSULTATION—OFFICER.] After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.

§ 122. VERDICT.] The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered in the docket.

§ 123. AS TO PART OF DEFENDANTS.] When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case, as to the rest, may be tried by another jury.

§ 124. WHEN DISCHARGED.] The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

§ 125. TRIAL AGAIN.] If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on until a verdict is rendered.

§ 126. JUDGMENT UPON GUILT.] When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

§ 127. FINE AND IMPRISONMENT.] A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

§ 128. ACQUITTAL AND DISCHARGE—PROSECUTOR TO PAY COSTS.] When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

§ 129. JUDGMENT ENTERED IMMEDIATELY.] At the close of the trial, judgment must be immediately rendered by the justice, and entered in his docket.

§ 130. IMMEDIATE DISCHARGE.] If judgment of acquittal is given, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

§ 131. MITTIMUS.] When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, or other officer, which is a sufficient warrant for its execution.

§ 132. CUSTODY UNTIL FINE PAID.] When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

§ 133. FINES PAID OVER TO TREASURER—EXPENSES.] Upon payment of the fine to the justice, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county treasurer, for the use of the public schools of the county. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

§ 134. BAIL BEFORE CONVICTION.] The defendant at any time after his arrest, and before conviction, may be admitted to bail, by giving an undertaking with sufficient surety in an amount to be fixed by the justice, for his appearance before the justice to answer the complaint.

§ 135. SUBPOENAS—CONTEMPTS.] In all criminal proceedings, the justice may issue subpœnas for witnesses, and punish for contempts as provided for in article XIII of the justices' code.

ARTICLE II.—APPEALS IN CRIMINAL PROCEEDINGS.

§ 136.. RIGHT TO APPEAL—ORAL NOTICE—ISSUES ON APPEAL.] The justice immediately on rendering judgment against the defendant, must inform him of his right to appeal therefrom, and the defendant may thereupon take an appeal to the district court of the county or subdivision in which the trial was had, by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice; and upon such appeal, the action may be tried anew in the district court upon questions of law and fact, or fact alone; or the appeal may be determined therein upon questions of law alone, and the judgment may be set aside, affirmed or modified, or a new trial granted as provided in section 96 of the justices' code.

§ 137. APPEAL AS IN CIVIL ACTIONS.] Instead of such appeal, the defendant may at any time within thirty days after judgment, appeal to such district court in the same manner as provided in sections 89, 90 and 91, and such appeal may be determined therein as provided for in section 96 of the justices' code.

§ 138. BAIL ON APPEAL.] Upon an appeal the justice must enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment shall not be stayed unless he enter into an undertaking in the amount fixed with sufficient surety to be approved by the justice to appear and answer at the next term of the district court, and not depart without leave of the same.

§ 139. TAKEN BY ANY MAGISTRATE.] The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof.

§ 140. WITNESSES MAY BE BOUND TO APPEAR.] When an appeal is taken, the justice must, if application be made by the district attorney, cause all material witnesses on behalf of the prosecution to enter into an undertaking in like manner as in a case where a defendant is held to answer on a preliminary examination for an indictable offense.

§ 141. PROCEEDINGS ON APPEAL—RECORD AND PAPERS TRANSMITTED.] Upon an appeal being taken, the justice must, within five days, transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, if any, and the undertaking of bail; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal, if any, and the undertakings filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and, if the return be defective, to make further return, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court, either party may have the benefit of all legal objections made in the justice's court.

§ 142. NO APPEAL DISMISSED—NEW TRIAL.] No appeal from the judgment of a justice of the peace in criminal proceedings shall be dismissed. All proceedings necessary to carry the judgment upon appeal into effect shall be had in the district court: *Provided, however*, That when a new trial is granted, the case must be remanded, and the new trial had in the justice's court.

Approved, February 13, 1877.

CHAPTER III.

JUSTICE'S QUARTERLY REPORT TO COUNTY BOARD.

AN ACT requiring Justices of the Peace to make a Quarterly Report to the County Commissioners of their respective Counties. [Chapter LX. Laws 1874-5.]

§ 1. MAKE SWORN REPORTS.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* It shall be the duty of all justices of the peace to make a full report, under oath, of all their proceedings in actions or matters in which the county or territory is a party, or interested therein, to the county commissioners of each of their respective counties, on the first Monday of January, April, July and October of each year.

§ 2. CONTENTS OF REPORT.] Such report shall contain the names of the parties to the action or proceeding, a statement of all orders made by said justice, whether the defendant be bound over or otherwise, the judgment, whether of dismissal or imprisonment, or for a fine and costs, or either; if for imprisonment, the extent thereof and costs; if for a fine, the amount thereof and costs. the amount of fine and costs paid, if any, and the disposition thereof; an itemized account of the fees of said justices, and of all officers and witnesses, and the names of each.

§ 3. MUST PAY OVER ALL MONEYS.] Said justices shall pay into the treasury of their respective counties all fines and moneys collected by them in behalf of the county or territory, at the time of making their reports, as provided in this act; but if, at any time, such moneys in their hands amount to two hundred dollars, they shall pay the same into the treasury forthwith.

§ 4. PENALTY.] Any justice of the peace violating any of the provisions of this act shall be liable to a fine of not less than ten nor more than one hundred dollars, to be recovered in a civil action by the county, which action may be brought originally in a justice's court or the district court.

§ 5. VIOLATION A CRIME.] And if any justice of the peace shall neglect or refuse to make such report, or neglect or refuse to pay over the aforesaid moneys collected by them, or shall refuse to allow the county commissioners, or any of them, to examine their records in regard to such matters, they shall be deemed guilty of willful and corrupt misconduct in office.

§ 6. EFFECT.] This act shall take effect from and after its passage and approval.

Approved, January 15, 1875.

PENAL CODE.

AN ACT to Establish a Penal Code for the Territory of Dakota.

CHAPTER I.

PRELIMINARY PROVISIONS.

§ 1. Title of act.] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, That this act shall be known as the penal code of the Territory of Dakota.

§ 2. What acts criminal.] No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this code, or by some of the statutes which it specifies as continuing in force, or such laws as do not conflict with the provisions of this code.

§ 3. Crime defined.] A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust or profit, under this territory.

§ 4. Crimes divided.] Crimes are divided into:

1. Felonies.
2. Misdemeanors.

§ 5. Felony defined.] A felony is a crime which is, or may be, punishable with death, or by imprisonment in the territorial prison.

§ 6. Misdemeanor.] Every other crime is a misdemeanor.

§ 7. Objects of penal code.] This code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the code of criminal procedure.

§ 8. CONVICTION PRECEDES PUNISHMENT.] The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction.

§ 9. JURY FIND DEGREE OF CRIME.] Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of the crime of which he is guilty.

§ 10. RULE OF CONSTRUCTION.] The rule of the common law that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

§ 11. PUNISHMENT DETERMINED BY COURT.] The several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

§ 12. PUNISHMENTS.] Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

§ 13. PUNISHMENT OF FELONIES.] Except in cases where a different punishment is prescribed by this code or by some existing provision of law, every offense declared to be felony is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the territorial prison not exceeding two years, or by both such fine and imprisonment.

§ 14. MISDEMEANORS.] Except in cases where a different punishment is prescribed by this code, or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER II.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 15. WHO LIABLE TO PUNISHMENT.] The following persons are liable to punishment under the laws of this territory:

1. All persons who commit, in whole or in part, any crime within this territory.

2. All who commit theft out of this territory, and bring, or are found with the property stolen, in this territory.

3. All who, being out of this territory, abduct or kidnap, by force or fraud, any person contrary to the laws of the place where such act is committed, and bring, send or convey such person within the limits of this territory, and are afterwards found therein.

4. And all who, being out of this territory, cause or aid, advise or en courage, another person, causing an injury to any person or property

within this territory by means of any act or neglect which is declared criminal by this code, and who are afterwards found within this territory.

§ 16. WHO CAPABLE OF CRIMES.] All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven years.

2. Children of the age of seven years, but under the age of fourteen years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

3. Idiots.

4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

5. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

6. Persons who committed the act charged without being conscious thereof.

7. Persons who committed the act, or made the omission charged, while under involuntary subjection to the power of superiors.

§ 17. INTOXICATION—HOW CONSIDERED.] No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent, is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent, with which he committed the act.

§ 18. MORBID PROPENSITY.] A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

§ 19. INSANITY—COURT MAY COMMIT FOR.] When a jury have returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public safety, order him to be committed to the territorial lunatic asylum, or to the care of such person or persons as the court may direct, till he become sane.

§ 20. INVOLUNTARY ACTS.] The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission from punishment therefor, arises either from:

1. Duress; or,

2. Coverture.

§ 21. WHAT DURESS EXCUSES.] The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force, or fear.

§ 22. SUBJECTION INFERRED FROM COVERTURE.] A subjection sufficient to excuse from punishment may be inferred in favor of a wife, from the fact of coverture, whenever she committed the act charged, in the presence and with the assent of her husband, except where such act is a participation in:

1. Treason.
2. Murder.
3. Manslaughter.
4. Maiming.
5. An attempt to kill.
6. Rape.
7. Abduction.
8. Abuse of children.
9. Seduction.
10. Abortion, either upon herself or another female.
11. Concealing the death of an infant, whether her own or that of another.
12. Fraudulently producing a false child, whether as her own, or that of another.
13. Bigamy.
14. Incest.
15. The crime against nature.
16. Indecent exposure.
17. Obscene exhibitions of books and prints.
18. Keeping a bawdy, or other disorderly house.
19. Misplacing a railway switch; or,
20. Obstructing a railway track.

§ 23. WHEN NOT INFERRED.] In case of the crimes enumerated in the last section, the wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress as defined in section 21.

§ 24. INFERENCE MAY BE REBUTTED.] The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely.

§ 25. EXEMPTION OF PUBLIC MINISTERS.] Ambassadors and other public ministers from foreign governments accredited to the president or the government of the United States, and recognized by it according to the laws of the United States, with their secreatries, messengers, families and servants are not liable to punishment in this territory, but are to be returned to their own country for trial and punishment.

CHAPTER III.

OF PARTIES TO CRIMES.

§ 26. CLASSIFICATION OF PARTIES.] The parties to crimes are classified as:

1. Principals; and,
2. Accessories.

§ 27. PRINCIPALS.] All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

§ 28. ACCESSORIES.] All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction or punishment, are accessories.

§ 29. NO ACCESSORIES.] In misdemeanor, there are no accessories.

§ 30. PUNISHMENT OF ACCESSORIES.] Except in cases where a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in a territorial prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER IV.

OF CRIMES AGAINST RELIGION AND CONSCIENCE.

§ 31. BLASPHEMY DEFINED.] Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the holy scriptures, or the christian religion.

§ 32. SERIOUS DISCUSSION.] If it appears beyond reasonable doubt that the words complained of were used in the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy.

§ 33. MISDEMEANOR.] Blasphemy is a misdemeanor.

§ 34. PROFANE SWEARING DEFINED.] Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer, or any other person, or in light, trifling or irreverent speech.

§ 35. PUNISHMENT OF.] Every person guilty of profane swearing is punishable by a fine of one dollar for each offense.

§ 36. SUMMARY CONVICTION FOR.] Whenever any profane swearing is committed in the presence and hearing of any justice of the peace, mayor, recorder, or alderman of any city, while holding a court, or under any other circumstances such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof.

§ 37. PENALTIES—HOW COLLECTED.] If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail for every offense, or for any number of offenses whereof he was convicted at one and the same time, for not less than one day, nor more than three days; there to be confined in a room separate from all other prisoners.

§ 38. THE SABBATH.] The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless, and serious interruptions of the repose and religious liberty of the community.

§ 39. SABBATH BREAKING.] Any violation of this prohibition is Sabbath breaking.

§ 40. DAY DEFINED.] Under the term "day," as employed in the phrase "first day of the week," in the eight sections following, is included all the time from midnight to midnight.

§ 41. SABBATH BREAKING DEFINED.] The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath breaking:

1. Servile labor.
2. Undue travel.
3. Public sports.
4. Trades, manufactures and mechanical employments.
5. Public traffic.
6. Serving process.

§ 42. SABBATH LABOR.] All manner of servile labor, on the first day of the week, is prohibited, excepting works of necessity or charity.

§ 43. UNDUE TRAVEL.] All traveling on the first day of the week is prohibited, excepting such as is performed upon foot or in carrying or in a conveyance carrying the United States mail, or such as is done in cases of charity or necessity, or in going to or returning from some funeral, place of worship, or religious assembly within the distance of twenty miles, or in going for medical aid or for medicines and returning, or in visiting the sick and returning, or in going express by order of some public officer, in removing one's family or household furniture when such removal was commenced on some other day.

§ 44. PERSONS OBSERVING OTHER DAY.] It is a sufficient defense in proceedings for servile labor or undue travel on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor or travel upon that day, and that the labor or travel complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

§ 45. PUBLIC SPORTS.] All shooting, sporting, horse racing, gaming or other public sports, upon the first day of the week, are prohibited.

§ 46. TRADES AND EMPLOYMENTS.] All trades, manufactures and mechanical employments upon the first day of the week are prohibited.

§ 47. PUBLIC TRAFFIC.] All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

§ 48. SERVING PROCESS.] All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

§ 49. Punishment.] Every person guilty of Sabbath breaking is punishable by a fine of one dollar for each offense.

§ 50. Fines collected—no exemptions.] The fines prescribed in this chapter for profane swearing and for Sabbath breaking, may be collected in the manner prescribed by law for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

§ 51. Maliciously serving process.] Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

§ 52. Compelling form of belief.] Any willful attempt, by means of threats or violence, to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor.

§ 53. Preventing religious act.] Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

§ 54. Disturbing religious meeting.] Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

§ 54. Definition of the offense] The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.

2. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have actually resided or carried on business.

3. Exhibiting within the like distance, any shows or plays without a license by the proper authority.

4. Engaging in, or aiding or promoting, within the like distance, any racing of animals or gaming of any description.

5. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

CHAPTER V.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 56. Giving or receiving bribe.] Every person who, by offering to give or by giving a bribe, to any elector, or who by menace or any other corrupt means, either directly or indirectly attempts to influence such elector in giving his vote at any election, and every elector entitled to vote at such election who shall take or receive such bribe, shall be punished by fine not exceeding one thousand dollars, and not less than one hundred dollars, and be imprisoned in the county jail not exceeding one year and not less than three months.

§ 57. ILLEGAL INFLUENCE.] Every person offering, giving or loaning to another any money, or other thing of value to induce him to influence any elector to vote in a particular way, or for any person at any such election, shall be punished by fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 58. BETTING UPON ELECTIONS.] Every person who makes, offers, or accepts any bet or wager upon the result of any election or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate, or for any particular candidate, or upon the vote to be cast by any person or persons, or upon the decision to be made by any inspector, or canvasser, of any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election, is guilty of a misdemeanor.

§ 59. OFFERS OF OFFICE.] Every person who, being a candidate at any election, offers, or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of misdemeanor.

§ 60. COMMUNICATING SAME.] Every person who, not being a candidate, communicates any offer made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of misdemeanor.

§ 61. MONEY FOR ELECTIONS.] Every person, who with intent to promote the election, either of himself or of any other person, or candidate, either:

1. Furnishes, or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls; except for the conveyance of voters who are sick, poor, or infirm; or,

2. Furnishes, or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills and other papers previous to such election, is guilty of misdemeanor.

§ 62. DEFRAUDING ELECTOR IN HIS VOTE.] Every person who fraudulently alters the ballot of any elector, or substitutes one ballot for another, or furnishes any elector with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote, and to have the same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of misdemeanor.

§ 63. OBSTRUCTING ELECTORS.] Every person who willfully and without lawful authority obstructs, hinders, or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor.

§ 64. DOUBLE VOTING OR OFFER.] Every person who votes more than once at any election, or who offers to vote after having once voted, either in the same or in another election district, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

§ 65. UNQUALIFIED VOTING.] Every person knowing himself not to be a qualified voter, who votes, or offers to vote at any election, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months.

§ 66. PROCURING SAME.] Every person who procures, aids, assists, counsels, or advises another to give his vote, knowing that such person is disqualified, shall be punished by fine not exceeding five hundred dollars, nor less than fifty dollars, and by imprisonment in the county jail not exceeding one year.

§ 67. SAME.] Every person who procures or counsels another to enter any town, ward, or election district for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor.

§ 68. VOTING OUT OF PRECINCT.] Every person who, at any election, knowingly votes or offers to vote in any election district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor.

§ 69. CONVICTED FELON.] Every person who having been convicted of any bribery or felony, thereafter offers to vote at any election without having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.

§ 70. NAME REGISTERED IMPROPERLY.] Every person who causes his name to be registered as that of an elector, upon any registry of voters authorized by law to be kept in any town, city or election district of this territory, knowing that he is not a qualified voter within the territorial limits covered by such registry, is punishable by imprisonment in the territorial prison not less than one year.

§ 71. PERSONATING REGISTERED VOTERS.] Every person who, within any city, town or election district in this territory in which a registry of qualified voters is by law authorized to be kept, falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the territorial prison not less than one year.

§ 72. FALSE STATEMENTS UPON.] Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any registry of voters authorized by law to be kept in any city, town, or election district of this territory, or at the time of offering his vote at any election knowingly makes any false statement or employs any false representation or false pretence or token, to procure his name to be registered or his vote to be received, is guilty of a misdemeanor.

§ 73. WHAT FALSE STATEMENT.] A false statement, representation or token, made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false, and suffered it to pass uncontradicted.

§ 74. DISTURBANCE OF PUBLIC MEETINGS.] Every person who willfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

§ 75. PREVENTING PUBLIC MEETINGS.] Every person who, by threats, intimidations or unlawful violence willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

§ 76. PREVENTING ATTENDANCE.] Every person who makes use of any force or violence, or of any threat to do any unlawful act, as a means of preventing an elector from attending any public meeting lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor.

§ 77. INTIMIDATION AND BULLDOZING] Every person who willfully, by unlawful arrest, by force and violence, or by threats or intimidation, prevents or endeavors to prevent an elector from freely giving his vote at any election, or employs either of such means to hinder him from voting, or to cause him to vote for any person or candidate, shall be punished by fine not exceeding one thousand dollars, and not less than fifty dollars.

§ 78. VIOLENCE, THREATS, &c] Every person who procures or endeavors to procure the vote of any elector, or the influence of any person or other electors, at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealings in business, or trade, or enforcing the payment of debts or bringing a suit or criminal prosecution, or any other threat of injury, to be inflicted by him or by his means or procurement, shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding six months.

§ 79. DISOBEDIENCE TO JUDGES.] Every person who willfully disobeys a lawful command of a judge or board of judges of any election, given in the execution of their duty as such, at an election, is guilty of a misdemeanor.

§ 80. VIOLENCE WHICH IMPEDES ELECTIONS.] Every person who is guilty of any riotous conduct, or who causes any disturbance or breach of the peace, or uses any disorderly violence, or threats of violence whereby any election is impeded or hindered, or whereby the lawful proceedings of the judges or canvassers at such election, in the discharge of their duty, are interfered with, is guilty of a misdemeanor.

§ 81. SUMMARY ARREST THEREFOR.] Whenever at an election any person refuses to obey the lawful command of the board of judges, or by any disorderly conduct in their presence interrupts or disturbs their proceedings, they may make an order directing the sheriff, or any constable of the county, or one or more special constables to be appointed by them, to take the person so offending into custody, and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at the election.

§ 82. NO DEFENSE.] The fact that any person, offending against the provisions of the preceding section, was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this code.

§ 83. DESTROYING BALLOTS OR BOXES.] Every person who willfully breaks or destroys, on the day of any election, or before the canvass is completed, any ballot box used or intended to be used at such election, or defaces, injures, destroys or conceals, any ballot which has been deposited in any ballot box at an election, and has not already been counted, or canvasesd, or any poll listused or intended to be used at such election, is guilty of a felony.

§ 84. FALSE POLL LIST.] Every clerk of the poll at any election, who willfully keeps a false poll list, or knowingly inserts in his poll list any false statement, is guilty of a misdemeanor.

§ 85. MISCONDUCT OF JUDGES.] Every judge of an election who willfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who willfully receives a vote from any person who has been duly challenged in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who willfully omits to challenge any person offering to vote whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor.

§ 86. FALSELY CANVASSING OR CERTIFYING.] Every judge of any election, member of any board of canvassers, messenger or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election, who willfully makes any false canvass of such votes, or makes, signs, publishes or delivers any false return of such election, knowing the same to be false, or willfully defaces, destroys or conceals any statement or certificate entrusted to his care, is guilty of a misdemeanor.

§ 87. BRIBING ELECTION OFFICER.] Every person who gives or offers a bribe to any judge, clerk, canvasser, or other officer of an election, as a consideration for some act done or omitted to be done contrary to his official duty, in relation to such election, shall be punished by fine, not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

§ 88. DISFRANCHISED.] Any person guilty of either of the offenses mentioned in sections 56 and 57 shall thereafter be forever disfranchised and rendered ineligible to any office of trust or profit within the territory, including that of delegate to congress.

§ 89. WITNESS NOT EXCUSED—EXEMPT.] No person shall be excused from testifying upon a prosecution for an offense mentioned in section 57, upon the ground that his statement might tend to criminate himself, but any person so testifying against the other party shall thereafter be exempt from punishment for such offense mentioned in said section.

§ 90. ELECTION DEFINED.] The word "election," as used in this chapter, designates only elections had within this territory for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this territory, or of the United States.

§ 91. IRREGULARITIES NO DEFENSE.] Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter.

§ 92. RIGHTS.] Nothing in this chapter shall be construed to authorize the punishment of any persons who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be, unlawfully conducted.

§ 93. SUBMISSION OF QUESTIONS.] Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate, is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election.

§ 94. GOOD FAITH.] Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.

§ 95. SELLING LIQUORS ON ELECTION DAY.] Every person who sells, gives away or disposes of any intoxicating liquors as a beverage, on the day of any general election, or special or local election in the town, city or county, where held, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail not to exceed twenty days, and by fine not exceeding one hundred, and not less than fifty dollars, such fine to go to the county general fund.

CHAPTER VI.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

§ 96. USURPING OFFICE.] Every person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office.

§ 97. ACTS OF OFFICER DE FACTO.] The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

§ 98. FALSELY ASSUMING OFFICE.] Every person who shall falsely assume or pretend to be any territorial, county or township officer, or who shall knowingly take upon himself to act as such, or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment in the county jail, not more than two years nor less than three months, and by fine not exceeding five hundred nor less than fifty dollars.

§ 99. GIVING OR OFFERING BRIBES.] Every person who gives or offers any bribe to any executive officer of this territory, with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 100. ASKING OR RECEIVING BRIBES.] Every executive officer or person elected or appointed to executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto, forfeits his office and is forever disqualified from holding any public office under this territory.

§ 101. PREVENTING OFFICER'S DUTY.] Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

§ 102. RESISTING OFFICERS.] Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty is guilty of a misdemeanor.

§ 103. TAKING EXCESSIVE FEES.] Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

§ 104. TAKING REWARD FOR OMITTING OR DELAYING OFFICIAL ACTS.] Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§ 105. FEES FOR SERVICE NOT RENDERED.] Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

§ 106. TAKING UNLAWFUL REWARD.] Every officer of this territory who asks or receives any compensation, fee or reward of any kind for any service rendered or expense incurred in procuring from the governor of this territory a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice, or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this territory or for detaining him therein, except upon an employment by the governor of this territory, and upon an account duly audited and paid out of the territorial treasury, is guilty of a misdemeanor.

§ 107. BUYING APPOINTMENTS TO OFFICE.] Every person who gives or agrees, or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars or more than one thousand dollars, or both.

§ 108. SELLING SAME.] Every person who, directly or indirectly, asks or receives or promises to receive any gratuity or reward or any promise of a gratuity or reward, for appointing another person or procuring for another person an appointment to any public office or any clerkship, deputation or other subordinate position in any public office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine not less than two hundred dollars, nor more than one thousand dollars, or both.

§ 109. REWARDS FOR DEPUTATION.] Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform or discharge any of the prerogatives or duties of his office, is punishable by imprisonment in the county jail not less than six months nor more than two years, and by a fine of not less than two hundred dollars, or more than one thousand dollars; and in addition thereto he forfeits his office.

§ 110. UNLAWFUL DEPUTATION VOID.] Every grant or deputation made contrary to the provisions of the two preceding sections is void; but official acts done before a conviction for any offense prohibited by those sections, shall not be deemed invalid in consequence of the invalidity of such grant or deputation.

§ 111. EXERCISING FUNCTIONS AFTER TERM.] Every person, who, having been an executive officer, willfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor.

§ 112. REFUSAL TO SURRENDER BOOKS.] Every person, who, having been an executive officer of this territory, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office, is guilty of a misdemeanor.

§ 113. ADMINISTRATIVE OFFICERS.] The various provisions of this chapter which relate to executive officers apply in relation to administrative officers in the same manner as if administrative and executive officers were both mentioned together.

CHAPTER VII.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

§ 114. PREVENTING MEETING OF LEGISLATURE.] Every person, who willfully and by force or fraud prevents the legislature of this territory or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

§ 115. DISTURBING THE LEGISLATURE] Every person, who willfully disturbs the legislature of this territory, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 116. COMPELLING ADJOURNMENT.] Every person, who willfully and by force or fraud compels or attempts to compel the legislature of this territory, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or both.

§ 117. INTIMIDATING A MEMBER.] Every person who willfully, by intimidation or otherwise, prevents any member of the legislature of this territory, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

§ 118. COMPELLING HOUSE TO PERFORM OR OMIT ACT.] Every person who willfully compels or attempts to compel either of the houses composing the legislature of this territory to pass, amend or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in the territorial prison not less than five, nor more than ten years, or by a fine of not less than five hundred dollars, nor more than two thousand dollars, or both.

§ 119. ALTERING DRAFT OF BILL.] Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a felony.

§ 120. ALTERING ENGROSSED COPY.] Every person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this territory, with intent to procure it to be approved by the governor or certified by the secretary of the territory, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

§ 121. GIVING BRIBES TO MEMBERS.] Every person who gives or offers to give a bribe to any member of the legislature, or attempt directly, or indirectly, by menace, deceit, suppression of truth or any other corrupt means to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

§ 122. RECEIVING BRIBES BY MEMBERS.] Every member of either of the houses composing the legislature of this territory, who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

§ 123. WITNESS REFUSING TO ATTEND.] Every person who, being duly summoned to attend as a witness before either house of the legislature or any committee thereof, authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

§ 124. REFUSING TO TESTIFY.] Every person who, being present before either house of the legislature or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

§ 125. MEMBERS FORFEITURE OF OFFICE.] The conviction of a member of the legislature of either of the crimes defined in this chapter, involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this territory.

CHAPTER VIII.

OF CRIMES AGAINST PUBLIC JUSTICE, BRIBERY AND CORRUPTION.

§ 126. BRIBES TO JUDGES, JURORS, REFEREES, ETC.] Every person who gives or offers to give a bribe, to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 127. RECEIVING BRIBES BY JUDICIAL OFFICERS.] Every judicial officer of this territory who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this territory.

§ 128. BY JURORS, REFEREES, ETC.] Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision, upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is guilty of felony.

§ 129. MISCONDUCT BY JURORS, ETC.] Every juror, or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict for or against any party; or,

2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

Is guilty of a misdemeanor.

§ 130. ACCEPTING GIFTS FROM PARTIES.] Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor.

§ 131. GIFTS DEFINED.] The word "gift" in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

§ 132. ATTEMPTS TO INFLUENCE JURORS, ETC.] Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict, or decision of any cause or matter pending, or about to be brought before him, either:

1. By means of any communication oral or written had with him, except in the regular course of proceedings upon the trial of the cause.

2. By means of any book, paper, or instrument exhibited otherwise than in the regular course of proceedings upon the trial of cause.

3. By means of any threat or intimidation.

4. By means of any assurance or promise of any pecuniary or other advantage; or,

5. By publishing any statement, argument or observation relating to the cause,

Is guilty of a misdemeanor.

§ 133. DRAWING JURORS FRAUDULENTLY.] Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law; or, who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor.

§ 134. MISCONDUCT BY OFFICERS OF JURY.] Every officer to whose charge any juror is committed by any court or magistrate, who negligently or willfully permits them, or any one of them, either:

1. To receive any communication from any person.
2. To make any communication to any person.
3. To obtain or receive any book or paper, or refreshment; or,
4. To leave the jury room without the leave of such court, or magistrate first obtained,

Is guilty of a misdemeanor.

CHAPTER IX.

OF RESCUES.

§ 135. RESCUING PRISONERS.] Every person, who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a charge of conviction of felony, by imprisonment in the territorial prison for not less than ten years.

2. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 136. RETAKING GOODS FROM CUSTODY.] Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER X.

OF ESCAPES, AND AIDING THEREIN.

§ 137. RE-ARREST OF ESCAPED PRISONERS.] Every prisoner confined upon conviction for a criminal offense, who escapes from prison, may be pursued, retaken and imprisoned again notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken and he shall remain so imprisoned, until tried for such escape, or discharged on a failure to prosecute therefor.

§ 138. ESCAPE FROM TERRITORIAL PRISON.] Every prisoner confined in the territorial prison for a term less than for life, who by force or fraud escapes therefrom, is punishable by imprisonment in such prison for a term not exceeding five years, to commence from the expiration of the original term of his imprisonment.

§ 139. ATTEMPT TO ESCAPE.] Every prisoner confined in the territorial prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

§ 140. ESCAPE FROM OTHER PRISON.] Every prisoner confined in any other than the territorial prison, who by force or fraud escapes therefrom, is punishable by imprisonment in the territorial prison not exceeding two years, or in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

§ 141. ATTEMPT TO ESCAPE.] Every prisoner confined in any other prison than the territorial prison, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

§ 142. ASSISTING PRISONER TO ESCAPE.] Every person who willfully, by any means whatever, assists any prisoner confined in any prison to escape therefrom, is punishable as follows:

1. If such prisoner was confined upon a charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years.

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

§ 143. CARRYING INTO PRISON THINGS TO AID ESCAPE.] Every person who carries or sends into any prison anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as follows:

1. If such prisoner was confined upon any charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years.

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by a fine of five hundred dollars, or both.

§ 144. CONCEALING ESCAPED PRISONERS.] Every person who willfully and knowingly conceals any prisoner, who, having been confined in prison upon a charge or conviction of misdemeanor, has escaped therefrom, is guilty of misdemeanor.

§ 145. ASSISTING ESCAPE FROM OFFICER.] Every person who willfully assists any prisoner in escaping or attempting to escape from the custody of any officer or person having the lawful charge of such prisoner under any process of law or under any lawful arrest, is guilty of a misdemeanor.

§ 146. PRISON DEFINED.] The term prison in this chapter includes territorial prisons, county jails, and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest.

§ 147. PRISONER DEFINED.] The term prisoner in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

CHAPTER XI.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

§ 148. LARCENY, DESTRUCTION, ETC., OF RECORDS.] Every clerk, register, or other officer having the custody of any record, map, or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, or fraudulently removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the territorial prison not exceeding five years, and in addition thereto forfeits his office.

§ 149. BY OTHER PERSONS.] Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 150. OFFERING FORGED OR FALSE INSTRUMENTS FOR RECORD.] Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this territory, which instrument, if genuine, might be filed or registered or recorded under any law of this territory or of the United States, is guilty of felony.

CHAPTER XII.

PERJURY AND SUBORNATION OF PERJURY.

§ 151. PERJURY.] Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury.

§ 152. OATH.] The term "oath," as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law.

§ 153. OATH OF OFFICE.] So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections.

§ 154. IRREGULARITIES NO DEFENSE.] It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 155. INCOMPETENCY—SAME.] It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate.

§ 156. MATERIALITY NOT NECESSARY.] It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

§ 157. MAKING DEPOSITIONS.] The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with intent that it be uttered or published as true.

§ 158. FALSE STATEMENT.] An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

§ 159. PUNISHMENT OF PREJURY] Perjury is punishable by imprisonment in the territorial prison as follows:

1. When committed on the trial of an indictment for felony, by imprisonment not less than ten years.

2. When committed on any other trial or proceeding in a court of justice, by imprisonment for not more than ten years.

3. In all other cases by imprisonment not more than five years.

§ 160. SUMMARY COMMITTAL OF WITNESSES.] Whenever it appears probable to any court of record that any person who has testified in any action or proceeding in such court has comitted perjury, such court may immediately commit such person by an order or process for that purpose to prison, or take a recognizance with sureties for his appearing and answering to an indictment for perjury.

§ 161. WITNESSES BOUND OVER TO APPEAR.] Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify before grand jury, and upon the trial, in case an indictment is found for such perjury, and shall also cause immediate notice of such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

§ 162. DOCUMENT MAY BE RETAINED.] If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the district attorney.

§ 163. SUBORNATION OF PERJURY DEFINED.] Every person who willfully procures another person to commit any perjury, is guilty of subornation of perjury.

§ 164. PUNISHMENT OF.] Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

§ 165. CONVICT OF PERJURY, INCOMPETENT.] No person who has been convicted of perjury, or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding or matter whatever upon his own behalf; nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But where such person has been actually received as a witness contrary to the provisions of this section, his incompetency shall not prejudice the rights, innocently acquired, of any other person claiming under the proceeding in which such person was so received.

CHAPTER XIII.

FALSIFYING EVIDENCE.

§ 166. OFFERING FALSE EVIDENCE.] Every person who, upon any trial, proceeding, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this code.

§ 167. DECEIVING A WITNESS.] Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

§ 168. PREPARING FALSE EVIDENCE.] Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced, as genuine upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of felony.

§ 169. DESTROYING EVIDENCE.] Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

§ 170. PREVENTING WITNESSES ATTENDING.] Every person who willfully prevents or dissuades any person who has been duly summoned or subpœnaed as a witness from attending, pursuant to the command of the summons or subpœna, is guilty of a misdemeanor.

§ 171. BRIBING WITNESSES.] Every person who gives or offers, or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony, is guilty of a misdemeanor.

CHAPTER XIV.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 172. INJURY TO RECORDS AND EMBEZZLEMENT.] Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office,

Is guilty of felony.

§ 173. PERMITTING ESCAPES BY SAME.] Every sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or,

2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

3. Commits any unlawful act tending to hinder justice,

Is guilty of a misdemeanor.

§ 174. REFUSING TO RECEIVE PRISONER.] Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person, as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

§ 175. DELAYING TO TAKE BEFORE MAGISTRATE.] Every public officer or other person having arrested any person upon any criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

§ 176. ARREST WITHOUT LAWFUL AUTHORITY.] Every public officer or person pretending to be a public officer, who under the pretence or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without due and legal process, is guilty of a misdemeanor.

§ 177. MISCONDUCT EXECUTING SEARCH.] Every peace officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

§ 178. REFUSING TO AID OFFICER.] Every person, who, after having been lawfully commanded to aid any officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.

§ 179. REFUSING TO MAKE ARREST.] Every person, who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 180. RESISTING EXECUTION OF PROCESS.] Every person, who, after proclamation issued by the governor declaring any county to be in a state of insurrection, resists or aids in resisting the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the territorial prison for not less than two years.

§ 181. OBSTRUCTING OFFICER IN DUTY.] Every person, who willfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor.

§ 182. EXTRA JUDICIAL OATHS.] Every person who takes an oath before an officer or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.

§ 183. ADMINISTERING SAME.] Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required by the provisions of some contract as a basis of or proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.

§ 184. COMPOUNDING CRIMES.] Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

1. By imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, where the crime compounded is one punishable either by death or by imprisonment in the territorial prison for life.

2. By imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding six months, where the crime compounded was punishable by imprisonment in the territorial prison for any other term than for life.

3. By imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment, where the crime or violation of statute compounded is a crime punishable by imprisonment in a county jail or by fine, or is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

§ 185. COMPOUNDING PROSECUTION.] Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor.

§ 186. ATTEMPT TO INTIMIDATE OFFICERS, ETC.] Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor.

§ 187. SUPPRESSING EVIDENCE.] Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

§ 188. BUYING LANDS IN SUIT.] Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

§ 189. BUYING PRETENDED TITLES.] Every person who buys or sells, or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof, or the person making such promise or covenant, has been in possession, or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor.

§ 190. MORTGAGE WHEN NOT PROHIBITED.] The two last sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands.

§ 191. COMMON BARRATRY DEFINED.] Common barratry is the practice of exciting groundless judicial proceedings.

§ 192. MISDEMEANOR.] Common barratry is a misdemeanor.

§ 193. PROOF REQUIRED.] No person can be convicted of common barratry, except upon proof that he has excited suits or proceedings at law, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

§ 194. INTEREST.] Upon prosecution for common barratry, the fact that the accused was himself a party in interest or upon the record to any proceedings at law, complained of, is not a defense.

§ 195. BUYING DEMANDS OR SUIT BY ATTORNEY.] Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing-in action, with intent to bring suit thereon, is guilty of a misdemeanor.

§ 196. SAME BY JUSTICE OR CONSTABLE.] Every justice of the peace and every constable who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor.

§ 197. LOANS ON CLAIMS FOR COLLECTION.] Every attorney, justice of the peace or constable, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person as a consideration for or inducement towards committing any evidence of debt or thing in action to such attorney, justice, constable, or any other person, for collection, is guilty of a misdemeanor.

§ 198. FORFEITURE OF OFFICE.] Every person convicted of a violation of either of the three preceding sections, in addition to the punishment by fine and imprisonment, prescribed therefor by this code, forfeits his office.

§ 199. RECEIVING CLAIMS ALLOWABLE.] Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of any evidence of debt or thing in action for any estate, real or personal, or for any services of any attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving any evidence of debt or thing in action for the purpose of remittance, and without any intent to violate the preceding section.

§ 200. APPLICATION OF PREVIOUS SECTIONS.] The provisions of sections 195, 197 and 199, relative to the buying of claims by an attorney, with intent to prosecute them, or to the lending or advancing of money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting a suit or demand in person.

§ 201. WITNESSES' PRIVILEGE] No person shall be excused from testifying in any civil action, to any facts showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.

§ 202. CRIMINAL CONTEMPTS.] Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for a contempt, in publishing a true, full, and fair report of any trial, argument, decision, or proceeding had in court.

§ 203. APPLICATION TO STAY TRIAL.] Every attorney or counselor-at-law who, knowing that an application has been made for an order staying the trial of an indictment to a judge, authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another judge to stay the same trial, is guilty of a misdemeanor.

§ 204. ACTING AFTER CHALLENGE ALLOWED.] Every grand juror who, with knowledge of a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

§ 205. DISCLOSURE OF DEPOSITIONS.] Every magistrate or clerk of any magistrate who willfully permits any deposition taken on an information or examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the United States attorney, the district attorney of the district and his assistants, and the defendant and his counsel, is guilty of a misdemeanor.

§ 206. SAME RETURNED BY GRAND JURY.] Every clerk of any court who willfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

§ 207. FRAUDULENT CONCEALMENT.] Every person who, having been called upon, by the lawful order of any court, to make a true exhibit of his real and personal effects, either:

1. Willfully conceals any of his estate or effects, or any books or writing relative thereto; or,

2. Willfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof, is guilty of a misdemeanor.

§ 208. RACING NEAR A COURT.] Every person concerned in any racing, running, or other trial of speed between any horses or other animals, within one-half mile of the place where any court is actually sitting, is guilty of a misdemeanor.

§ 209. SELLING LIQUOR IN COURT HOUSES, ETC.] Every person who sells any spirituous or intoxicating liquor within, or brings with intent to sell, or offer or expose for sale therein, any such liquor into, either:

1. Any building established as a court house for the holding of courts of record while any session of such court is being held therein, except in such part of such building not appropriated to the use of courts or of juries attending them, in which such sale has been authorized by a resolution of the board of county commissioners of the county; or,

2. And building established as a jail or prison; or,

3. Any building or shed, outhouse, porch, yard or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this territory, or for canvassing votes cast at such election,

Is guilty of a misdemeanor.

§ 210. MISCONDUCT BY ATTORNEYS.] Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 211. PERMITTING NAME TO BE USED.] If any attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

§ 212. IN WHAT CASES LAWFUL.] Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers or municipal corporation, on behalf of another party, the attorney general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

§ 213. PRETENSES TO BIRTH OF CHILD.] Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 214. SUBSTITUTING CHILD.] Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 215. IMPORTING CONVICTS.] Every owner, master or commander of any vessel arriving from a port without this territory, who knowingly lands or permits to land at any port, city or place within this territory, any passenger or hand who is a foreign convict of any crime which, if committed in this territory would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

§ 216. OMISSION OF DUTY BY OFFICER.] Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful omission to perform such duty where no special provisions shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

§ 217. PROHIBITED ACT.] Where the performance of an act is prohibited by any statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

§ 218. DISCLOSING INDICTMENT.] Every grand juror, district attorney, clerk, judge, or other officer, who, excepting by issuing or in executing a warrant to arrest the defendant, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

§ 219. DISCLOSING JURY PROCEEDINGS] Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdeamor.

§ 220. SUIT IN A FALSE NAME.] Every person who maliciously institutes or prosecutes any action or legal proceeding, or makes or procures any arrest, in the name of a person who does not exist or has not consented that it be instituted or made, is guilty of a misdemeanor.

§ 221. MALICIOUSLY PROCURING SEARCH.] Every person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

§ 222. COMMUNICATIONS WITH CONVICT.] Every person who, not being authorized by law, or by a written permission from an inspector, or by the consent of the warden, communicates with any convict in the territorial prison, or brings into or conveys out of the territorial prison any letter or printing to or from any convict, is guilty of a misdemeanor.

§ 223. NEGLECT TO CANVASS RETURNS.] Every county clerk who willfully refuses or neglects to canvass the election returns of his county, or neglects to make proper abstracts thereof and forward the same to the proper officer, as is or may hereafter be provided by law, or fails to issue certificates of election to such persons lawfully entitled thereto, is punishable by fine not exceeding one hundred dollars for each refusal or neglect.

§ 224. FALSE CERTIFICATE.] Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor.

CHAPTER XV.

CONSPIRACY.

§ 225. CRIMINAL CONSPIRACIES DEFINED.] If two or more persons conspire, either:

1. To commit any crime; or,
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or,
3. Falsely to move or maintain any suit, action or proceeding; or,
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat or to obtaining money or property by false pretenses; or,
5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws,

They are guilty of a misdemeanor.

§ 226. AGAINST PEACE OF THE TERRITORY.] If two or more persons, being out of this territory, conspire to commit any act against the peace of this territory, the commission or attempted commission of which, within this territory, would be treason against the territory, they are punishable by imprisonment in the territorial prison not exceeding ten years.

§ 227. OVERT ACT—WHEN NECESSARY.] No agreement except to commit a felony upon the person of another, or to commit arson or burglary amounts to a conspiracy, unless some act beside such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

CHAPTER XVI.

OF CRIMES AGAINST THE PERSON.

SUICIDE.

§ 228. SUICIDE DEFINED.] Suicide is the intentional taking of one's own life.

§ 229. NO FORFEITURE.] Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

§ 230. ATTEMPT.] But every person who with intent to take his own life, commits upon himself any act dangerous to human life, or which if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

§ 231. AIDING SUICIDE.] Every person, who willfully, in any manner, advises, encourages, abets or assists another person in taking his own life, is guilty of aiding suicide.

§ 232. FURNISHING WEAPON OR DRUG.] Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

§ 233. AIDING ATTEMPT.] Every person, who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

§ 234. INCAPACITY—NO DEFENSE.] It is no defense to a prosecution for aiding suicide, or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

§ 235. PUNISHMENT OF AIDING SUICIDE.] Every person guilty of aiding suicide is punishable by imprisonment in the territorial prison for not less than seven years.

§ 236. PUNISHMENT OF ATTEMPTING SUICIDE.] Every person guilty of attempting suicide, or of aiding an attempt at suicide, is punishable by imprisonment in the territorial prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER XVII.

HOMICIDE.

§ 237. HOMICIDE DEFINED.] Homicide is the killing of one human being by another.

§ 238. HOMICIDES CLASSIFIED.] Homicide is either:

1. Murder.
2. Manslaughter.
3. Excusable homicide; or,
4. Justifiable homicide.

§ 239. CORPUS DELICTI.] No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed, and the fact of killing by the accused, are each established as independent facts beyond a reasonable doubt.

§ 240. PETIT TREASON ABOLISHED.] The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

§ 241. CONFIDENTIAL OR DOMESTIC RELATION.] Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

§ 242. MURDER DEFINED.] Homicide is murder in the following cases:

1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being.

2. When perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual.

3. When perpetrated without any design to effect death by a person engaged in the commission of any felony.

§ 243. DESIGN TO EFFECT DEATH INFERRED.] A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

§ 244. PREMEDITATION.] A design to effect death sufficient to constitute murder, may be formed instantly before committing the act by which it is carried into execution.

§ 245. ANGER OR INTOXICATION NO DEFENSE.] Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

§ 246. ACT EMINENTLY DANGEROUS.] Homicide perpetrated by an act eminently dangerous to others and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

§ 247. DUEL OUT OF TERRITORY.] Every person who, by previous appointment within this territory, fights a duel without this territory, and in so doing, inflicts a wound upon his antagonist, or any other person, whereof the person injured dies, and every second engaged in such duel, is guilty of murder, and may be indicted, tried and convicted in any county of the territory.

§ 248. MURDER BY FORCIBLY TAKING MINE.] If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such numbers is calculated to inspire, or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch, or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry or attempted entry, who shall be present, and aiding, assisting, or in anywise encouraging such entry or attempted entry, shall be deemed a principal in the commission of said offense.

§ 249. PUNISHMENT OF MURDER.] Every person convicted of murder shall suffer death for the same.

§ 250. MANSLAUGHTER IN FIRST DEGREE.] Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

§ 251. KILLING UNBORN QUICK CHILD.] The willful killing of an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree.

§ 252. BY ADMINISTERING DRUGS.] Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or substance whatever, or who uses or employs any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, is guilty in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree.

§ 253. PUNISHMENT MANSLAUGHTER—FIRST DEGREE.] Every person guilty of manslaughter in the first degree is punishable by imprisonment in the territorial prison for not less than four years.

§ 254. SECOND DEGREE DEFINED.] Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

§ 255. OWNER OF MISCHIEVOUS ANIMAL.] If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

§ 256. NAVIGATING VESSELS.] Every person navigating any vessel for gain who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is overset or injured, and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree.

§ 257. HAVING CHARGE OF STEAMBOATS.] Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person is killed, is deemed guilty of manslaughter in the second degree.

§ 258. CHARGE OF STEAM ENGINES.] Every engineer, or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

§ 259. LIABILITIES OF PHYSICIANS.] Every physician who, being in a state of intoxication, without a design to effect death, administers any poison drug or medicine, or does any other act as such physician, to another person, which produces the death of such other person, is guilty of manslaughter in the second degree.

§ 260. KEEPING GUNPOWDER.] Every person guilty of making or keeping gunpowder or saltpetre within any city or village, in any quantity or manner such as is prohibited by law or by any ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter in the second degree.

§ 261. PUNISHMENT MANSLAUGHTER—SECOND DEGREE.] Every person guilty of manslaughter in the second degree is punishable by imprisonment in the territorial prison not more than four years, and not less than two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment.

§ 262. EXCUSABLE HOMICIDE.] Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat; provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

§ 263. JUSTIFIABLE HOMICIDE BY OFFICERS.] Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

§ 264. BY OTHER PERSON.] Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is; or,

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; or,

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

CHAPTER XVIII.

MAIMING.

§ 265. MAIMING DEFINED.] Every person, who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance, or disables any member or organ of his body, or seriously diminishes his physical vigor, is guilty of maiming.

§ 266. MAIMING ONE'S SELF.] Every person, who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

§ 267. SAME.] Every person who inflicts upon himself any injury such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, to excite sympathy, or to obtain alms, or any charitable relief, is guilty of maiming.

§ 268. WHAT INJURY IS MAIMING.] To constitute maiming it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

§ 269. WHAT DISFIGUREMENT.] To constitute maiming by disfigurement the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

§ 270. DESIGN TO MAIM INFERRED.] A design to injure, disfigure or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

§ 271. PREMEDITATED DESIGN.] A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound.

§ 272. SUBSEQUENT RECOVERY.] Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to the proof.

§ 273. PUNISHMENT.] Every person guilty of maiming is punishable by imprisonment in the territorial prison not exceeding seven years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

CHAPTER XIX.

KIDNAPPING.

§ 274. KIDNAPPING DEFINED.] Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

1. To cause such other person to be secretly confined or imprisoned in this territory against his will; or,

2. To cause such other person to be sent out of this territory against his will; or,

3. To cause such person to be sold as a slave, or in any way held to service against his will, is punishable by imprisonment in the territorial prison not exceeding ten years.

Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appear satisfactorily to the jury, that such person was above the age of twelve years, and that such consent was not extorted by threat, or by duress.

§ 275. SELLING SERVICES OF PERSONS.] Every person who, within this territory or elsewhere, sells or in any manner transfers, for any term, the services or labor of any black, mulatto, or other person of color, who has been forcibly taken or inveigled, or kidnapped from this territory, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 276. REMOVING PERSONS HELD TO SERVICE.] Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by law, takes or removes or willfully does any act tending towards removing from this territory any such person, is guilty of felony, punishable by imprisonment in the territorial prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

§ 277. PENALTY.] Every judge or other public officer of this territory who grants or issues any warrant, certificate or other process in any proceeding for the removal from this territory of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

CHAPTER XX.

ATTEMPTS TO KILL.

§ 278. ADMINISTERING POISON.] Every person who with intent to kill, administers, or causes or procures to be administered to another any poison which is actually taken by such other, but by which death is not caused, is punishable by imprisonment in the territorial prison not less than ten years.

§ 279. SHOOTING AND ASSAULT.] Every person who shoots or attempts to shoot at another, with any kind of firearms, air-gun, or other means whatever, with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon, and by such other means or force as was likely to produce death with intent to kill any other person, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 280. OTHER ASSAULTS.] Every person who is guilty of an assault with intent to kill any person, the punishment for which is not prescribed by the foregoing section, is punishable by imprisonment in the territorial prison for a term not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER XXI.

ROBBERY.

§ 281. ROBBERY DEFINED.] Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

§ 282. HOW FORCE OR FEAR EMPLOYED.] To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

§ 283. DEGREE IMMATERIAL.] When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 284. WHAT FEAR AN ELEMENT.] The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery.

§ 285. VALUE TAKEN IMMATERIAL.] When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

§ 286. TAKING SECRETLY NOT ROBBERY.] The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

§ 287. TWO DEGREES OF ROBBERY.] Robbery when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

§ 288. PUNISHMENT OF FIRST DEGREE.] Every person guilty of robbery in the first degree is punishable by imprisonment in the territorial prison not less than ten years.

§ 289. OF SECOND DEGREE.] Every person guilty of robbery in the second degree is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 290. WHEN BY TWO OR MORE PERSONS.] Whenever two or more persons conjointly commit a robbery, or where the whole number of persons conjointly committing a robbery, and persons present and aiding such robbery amount to two or more, each and either of such persons is punishable by imprisonment for life.

CHAPTER XXII.

ASSAULTS WITH INTENT TO COMMIT FELONY OTHER THAN ASSAULTS WITH INTENT TO KILL.

§ 291. SHOOTING AND ASSAULT—DEADLY WEAPONS.] Every person who shoots or attempts to shoot at another with any kind of fire-arms, air-gun, or other means whatever, or commits any assault or battery upon another by means of any deadly weapon or by such other means or force as was likely to produce death, with intent to commit any felony other than assault with intent to kill, or in resisting the execution of any legal process, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 292. OTHER ASSAULTS.] Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 293. ADMINISTERING DRUG.] Every person guilty of administering to another any chloroform, ether, laudanum or other intoxicating, narcotic or anesthetic agent, with intent thereby to enable or assist himself or any other person to commit any felony, is guilty of felony.

CHAPTER XXIII.

DUELS AND CHALLENGES.

§ 294. DUEL DEFINED.] A duel is any combat, with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel.

§ 295. PUNISHMENT FOR FIGHTING.] Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 296. INCAPACITY TO HOLD OFFICE.] Every person convicted of fighting a duel is thereafter incapable of holding or being elected or appointed to any office, place or post of trust or emolument, civil or military, under this territory.

§ 297. SECONDS, AIDS AND SURGEONS.] Every person who is present at the time when any duel is fought, either as second, aid or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 298. PUNISHMENT FOR CHALLENGES.] Every person who challenges another to fight a duel; every person who accepts any such challenge; and every person who knowingly forwards, carries or delivers any such challenge, is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 299. CHALLENGE DEFINED.] Any words, spoken or written, or any signs, uttered or made to any person, expressing or implying or intended to express or imply a desire, request, invitation or demand, to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge.

§ 300. ATTEMPTS TO INDUCE CHALLENGE.] Every person guilty of sending, uttering or making to another any words or signs whatever, with intent to provoke or induce such person to give or receive any challenge to fight a duel, is guilty of a misdemeanor.

§ 301. POSTING FOR NOT FIGHTING.] Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

§ 302. LEAVING TERRITORY TO EVADE LAWS.] Every person who leaves this territory with intent to elude any of the provisions of this chapter, and to commit any act out of this territory, such as is prohibited by this chapter, and who does any act, although out of this territory, which would be punishable by said provisions, if committed within this territory, is punishable in the same manner as he would have been, in case such act had been committed within this territory.

§ 303. WHERE TRIED.] Such person may be indicted and tried in any county within this territory.

§ 304. WITNESSES' PRIVILEGE.] No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER XXIV.

ASSAULT AND BATTERY.

§ 305. ASSAULT.] An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another.

§ 306. BATTERY.] A battery is any willful and unlawful use of force or violence upon the person of another.

§ 307. WHEN FORCE ALLOWABLE.] To use or to attempt to offer to use force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent, or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing an idiot, lunatic, insane person or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for

the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 308. PUNISHMENT OF ASSAULT AND BATTERY.] Assault or assault and battery is punishable by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

§ 309. ASSAULTS WITH DANGEROUS WEAPONS.] Every person who, with intent to do bodily harm, and without justifiable or excusable cause, commits any assault upon the person of another with any sharp or dangerous weapon, or who without such cause shoots or attempts to shoot at another with any kind of fire-arms or air-gun or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year.

CHAPTER XXV.

LIBEL.

§ 310. LIBEL DEFINED.] Any malicious injury to good name, other than by words orally spoken, is a libel.

§ 311. LIBEL A MISDEMEANOR.] Every person who willfully, and with a malicious intent to injure another, publishes any libel, is guilty of a misdemeanor.

§ 312. MALICE PRESUMED.] An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

§ 313. TRUTH GIVEN IN EVIDENCE.] In all criminal prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted.

§ 314. PUBLICATION DEFINED.] To sustain a charge of publishing a libel it is not needful that the words complained of should have been read by any person. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read by any other person than himself.

§ 315. LIABILITY OF EDITORS AND OTHERS.] Each author, editor and proprietor of any book, newspaper or serial publication, and each member of any partnership or incorporated association, by which any book, newspaper, or serial publication is issued, is chargeable with the publication of any words contained in any part of said book, or number of such newspaper or serial.

§ 316. PRIVILEGE.] No reporter, editor or proprietor of any newspaper, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice, in making such report, which shall in no case be implied from the mere fact of publication.

§ 317. EXTENT OF PRIVILEGE.] Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

§ 318. OTHER PRIVILEGED COMMUNICATIONS.] A communication made to a person interested in the communication by one who was also interested or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is called a privileged communication.

§ 319. THREATENING TO PUBLISH LIBEL.] Every person who threatens to another to publish a libel concerning him, or any parent, husband, wife or child of such person, or member of his family, is guilty of a misdemeanor.

CHAPTER XXVI.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

§ 320. RAPE DEFINED.] Rape is an act of sexual intercourse accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of ten years:
2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by force or violence.
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution.
5. Where she is prevented from resisting by any intoxicating, narcotic or anesthetic agent administered by or with the privity of the accused.
6. Where she is at the time unconscious of the nature of the act, and this is known to the accused.
7. Where she submits under a belief that the person committing the act is her husband; and this belief is induced by artifice, pretense or concealment, practiced by the accused, with intent to induce such belief.

§ 321. WHEN PHYSICAL ABILITY MUST BE PROVED.] No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

§ 322. WHAT SUFFICIENT.] The essential guilt of rape consists in the outrage to the person and feeling of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

§ 323. RAPE IN FIRST DEGREE DEFINED.] Rape committed upon a female under the age of ten years, or incapable through lunacy, or any other unsoundness of mind of giving legal consent, or accomplished by means of force overcoming her resistance, is rape in the first degree.

§ 324. SECOND DEGREE.] In all other cases rape is of the second degree.

§ 325. PUNISHMENT IN FIRST DEGREE.] Rape in the first degree is punishable by imprisonment in the territorial prison not less than ten years.

§ 326. SECOND DEGREE.] Rape in the second degree is punishable by imprisonment in the territorial prison not less than five years.

§ 327. COMPELLING WOMAN TO MARRY.] Every person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, is punishable by imprisonment in the territorial prison not less than ten years.

§ 328. TO COMPEL WOMAN TO MARRY OR BE DEFILED.] Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 329. SEDUCTION FOR PROSTITUTION.] Every person who inveigles or entices any unmarried female of previous chaste character under the age of twenty-five years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 330. ABDUCTION.] Every person who takes away any female under the age of fifteen years, from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of marriage, concubinage or prostitution, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 331. SEDUCTION UNDER PROMISE OF MARRIAGE.] Every person, who, under promise of marriage, seduces and has illicit connection with any unmarried female of previous chaste character, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 332. SUBSEQUENT MARRIAGE A DEFENSE] The subsequent marriage of the parties is a defense to a prosecution for a violation of the last section.

CHAPTER XXVII.

ADULTERY.

§ 333. ADULTERY DEFINED.] Adultery is the unlawful voluntary sexual intercourse, of a married person, with one of the opposite sex, and when the crime is committed between parties, only one of whom is married, both are guilty of adultery.

§ 334. PUNISHMENT FOR.] Every person guilty of the crime of adultery, shall be punished by imprisonment in the territorial prison not exceeding five years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER XXVIII.

ABANDONMENT AND NEGLECT OF CHILDREN.

§ 335. DESERTING CHILD.] Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the territorial prison not exceeding seven years, or in a county jail not exceeding one year.

§ 336. OMITTING TO PROVIDE.] Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

CHAPTER XXIX.

ABORTIONS AND CONCEALING DEATH OF INFANT.

§ 337. ADMINISTERING DRUGS.] Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.

§ 338. SUBMITTING TO ATTEMPT] Every woman who solicits of any person any medicine, drug or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 339. CONCEALING STILL BIRTH OR DEATH.] Every woman who endeavors either by herself or by the aid of others to conceal the still birth of an issue of her body, which if born alive would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars, or both.

CHAPTER XXX.

CHILD STEALING.

§ 340. PUNISHMENT.] Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the territorial prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER XXXI.

BIGAMY, INCEST AND THE CRIME AGAINST NATURE.

§ 341. BIGAMY.] Every person who, having been married to another who remains living, marries any other person, except in the cases specified in the next section, is guilty of bigamy.

§ 342. EXCEPTIONS.] The last section does not extend:

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage whose husband or wife by such marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for the space of five years together; nor,

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court, unless such marriage was dissolved upon the ground of adultery committed by such person; nor,

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 343. PUNISHMENT OF BIGAMY.] Every person guilty of bigamy is punishable by imprisonment in the territorial prison not exceeding five years.

§ 344. OTHER UNLAWFUL MARRIAGES.] Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 345. INCEST.] Persons who, being within the degrees of consanguinity within which marriages are, by the laws of the territory, declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are punishable by imprisonment in the territorial prison not exceeding ten years.

§ 346. CRIME AGAINST NATURE] Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 347. PENETRATION SUFFICIENT.] Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER XXXII.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 348. DISPOSAL OF ONE'S OWN BODY.] Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his life time shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these provisions.

§ 349. DUTY OF BURIAL] Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being lying within this territory must be decently buried within a reasonable time after the death.

§ 350. BURIAL IN OTHER STATES.] The last section does not affect the right to carry the dead body of a human being through this territory, or to remove from this territory the body of a person dying within it, for the purpose of burying the same in another state or territory.

§ 351. DISSECTION—WHEN ALLOWED.] The right to dissect the dead body of a human being exists in the following cases:

1. In the cases authorized by positive enactment of the legislative assembly of this territory.

2. Whenever the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.

3. Whenever any husband or next of kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death.

§ 351. UNLAWFUL DISSECTION MISDEMEANOR] Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

§ 352. REMAINS AFTER DISSECTION.] In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

§ 354. DEAD LIMB OR MEMBER OF BODY.] All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body, separated therefrom during lifetime.

§ 355. BY WHOM BURIAL DONE.] The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased were a married woman, the duty of burial devolves upon her husband.

2. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this territory, and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband, nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there is no tenant, upon the owner of the premises, or master, or, if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

§ 356. NEGLECT OF BURIAL.] Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omit to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

§ 357. WHO ENTITLED TO CUSTODY OF BODY.] The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the cases in which an inquest is required by law to be held upon a dead body, by a coroner, such coroner is entitled to its custody until such inquest has been completed.

§ 358. UNLAWFUL REMOVAL OF THE DEAD.] Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 359. PURCHASING SAME—FORBIDDEN.] Every person who purchases, or who receives, except for the purpose of burial, any dead body of a human being knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 360. UNLAWFUL INTERFERENCE WITH PLACES OF BURIAL.] Every person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove any dead body of a human being for the purpose of selling the same, or for the purpose of dissection; or,

2. To steal the coffin, or any part thereof, or anything attached thereto, or connected therewith, or the vestments or other articles buried with the same,

Is punishable by imprisonment in the territorial prison not exceeding two, or in a county jail not exceeding six, months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 361. REMOVAL TO ANOTHER BURIAL PLACE.] Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried, devolves upon the persons named in section 355, in the order in which they are named, and, if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial are made punishable by section 356.

§ 362. ARRESTING OR ATTACHING DEAD BODY.] Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 363. DISTURBING FUNERALS.] Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral; or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor.

§ 364. INJURY TO CEMETERY OR TOMB.] Every person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by fine of not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

§ 365. DISSECTION.] Every person who violates any provision of any enactment of the legislative assembly of this territory, now in force, or that hereafter may be enacted, not provided for in this code relative to dissection, is guilty of a misdemeanor.

CHAPTER XXXIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

§ 366. INDECENT EXPOSURES—EXHIBITIONS—PICTURES.] Every person who, willfully and lewdly, either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes or composes, stereotypes, prints, publishes, sells, distributes, or keeps for sale, or exhibits any obscene or indecent writing, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or moulds, cuts, casts, or otherwise makes any obscene or indecent figure, or form,

Is guilty of a misdemeanor.

§ 367. SEIZURE OF INDECENT ARTICLES.] Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 368. THEIR CHARACTER SUMMARILY DETERMINED.] The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure, is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he shall cause the same to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. But not more than two copies of any one writing, paper, book, picture, print or figure, shall be delivered to the district attorney.

§ 369. THEIR DESTRUCTION.] Upon the conviction of the accused, such district attorney shall cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 370. KEEPING BAWDY HOUSE.] Every person who keeps any bawdy house, house of ill-fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a misdemeanor.

§ 371. KEEPING DISORDERLY HOUSE.] Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor.

§ 372. LETTING BUILDING FOR UNLAWFUL PURPOSES.] Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor.

CHAPTER XXXIV.

LOTTERIES.

§ 373. LOTTERY DEFINED.] A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share of, or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known.

§ 374. LOTTERY A PUBLIC NUISANCE.] Every lottery is unlawful, and a common public nuisance.

§ 375. DRAWING LOTTERIES.] Every person who contrives, prepares, sets up, proposes or draws any lottery, is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made, and if such amount cannot be ascertained, then by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment.

§ 376. SELLING LOTTERY TICKETS.] Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest, or any paper certificate or instrument, purporting or represented or understood to be, or represent any ticket, chance, share or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

§ 377. BUYING LOTTERY TICKETS.] Every person who buys, or in any manner whatever accepts or receives for himself or another, any ticket, chance, share or interest, or any paper, certificate or instrument purporting or represented or understood to be, or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recovered by the county superintendent of public instruction, of the county in which the offense was committed, for the use of common schools in said county.

§ 378. ADVERTISING LOTTERIES.] Every person who, by writing or printing, by circulars or letters, or in any other way advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest, or where it may be obtained, or in any way aiding or assisting the same, or adapted to induce persons to adventure therein, is guilty of a misdemeanor.

§ 379. OFFERING PROPERTY DEPENDENT ON LOTTERY.] Every person who offers for sale, distribution or disposition in any way, any real or personal property, or things in action, or any interest therein, to be determined by lot or chance that shall be dependent upon the drawing of any lottery within or out of this territory, and every person who sells, furnishes or procures, or causes to be sold, furnished or procured in any manner whatsoever, any chance or share, or any interest whatever in any property offered for sale, distribution or disposition in violation of this section, or any ticket or other evidence of any chance, share or interest in such property, is guilty of a misdemeanor.

§ 380. LOTTERY OFFICES.] Every person who opens, sets up or keeps, by himself, or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery, or for making, receiving or registering any bets or wagers upon the drawing, determination or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars.

§ 381. ADVERTISING LOTTERY OFFICES.] Every person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any account of the opening, setting up or keeping of any office or other place for either of the purposes prohibited by the last section, is guilty of a misdemeanor.

§ 382. INSURING LOTTERY TICKETS.] Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share or interest in any lottery, or for or against the drawing of any number, or ticket, or number of any ticket in any lottery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share or interest in any lottery, or any number, or ticket, or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day, or in any particular order; and every person who promises, agrees or offers to pay any sum of money or to deliver any property or thing in action, or to do, or forbear to do anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor.

§ 383. ADVERTISING—SAME.] Every person who by writing or printing, by circulars or letters, or in any other way, advertises or publishes any offer, notice or proposal for any violation of the last section, is guilty of a misdemeanor.

§ 384. PROPERTY OFFERED.] All property offered for sale, distribution or disposition, in violation of the provisions of this chapter, is forfeited to the people of this territory, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys, to demand, sue for and recover, in behalf of this territory, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of common schools.

§ 385. LETTING BUILDING.] Every person who lets or permits to be used any building or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

§ 386. LOTTERIES OUT OF TERRITORY.] The provisions of this chapter apply in respect to lotteries drawn or to be drawn out of this territory, whether authorized or not by the laws of the state where they are drawn or to be drawn, in same manner as to lotteries drawn or to be drawn within this territory.

§ 387. ADVERTISEMENTS.] The provisions of sections 378 and 381 are applicable wherever the advertisement was published, or the letter or circular sent or delivered through or in this territory, notwithstanding the person causing or procuring the same to be published, sent or delivered, was out of this territory at the time of so doing.

CHAPTER XXXV.

GAMING.

§ 388. KEEPING GAMBLING APPARATUS.] It is unlawful to maintain or keep any table, cards, dice or any other article or apparatus whatever, useful or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered.

§ 389. PUNISHMENT.] Every person who knowingly violates the last section is guilty of a misdemeanor.

§ 390. APPARATUS A NUISANCE.] Every article or apparatus maintained or kept in violation of section 388, is a common and public nuisance.

§ 391. EXACTING PAYMENT.] Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of public instruction of the county in which the offense was committed, for the benefit of common schools in said county.

§ 392. WITNESS'S PRIVILEGE.] No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime; but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding.

§ 393. KEEPING GAMBLING ESTABLISHMENTS.] Every person who keeps any building, or part of any building, or any vessel or float, to be used or occupied for gambling, and every owner, agent or superintendent of any such place, who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor.

§ 394. KEEPING TABLES, ETC., PROHIBITED.] Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device, or apparatus, or is guilty of dealing faro, or banking for others to deal faro, or acting as look-out or game-keeper for the game of faro, or any other banking game where money or property is dependent upon the result, or who sells or vends what are commonly called lottery policies, or any writing, card, paper or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor.

§ 395. SEIZURE OF IMPLEMENTS AUTHORIZED.] Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter is equally authorized and enjoined to seize any table, cards, dice, or other article or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 396. IMPLEMENTS DESTROYED OR DELIVERED.] The magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the accused in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it has been used by the accused in violation of this chapter, he shall cause it to be destroyed or be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice, in his judgment, require.

§ 397. TO BE DESTROYED UPON CONVICTION.] Upon the conviction of the accused such district attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 398. PERSUADING PERSON TO VISIT GAMBLING PLACES.] Every person who persuades another to visit any building or part of a building, or any vessel or float used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action.

§ 399. DUTY OF CERTAIN OFFICERS.] It is the duty of all sheriffs, police officers, constables, and prosecuting or district attorneys, to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this chapter, and any omission so to do is punishable by a fine not exceeding five hundred dollars.

§ 400. DUTY OF MASTERS OF VESSELS.] If any commander, owner or lessee of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, and does not upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

§ 401. RACING OF ANIMALS FOR WAGER.] All racing or trial of speed between horses or animals for any bet, stake or reward, except such as is allowed by special laws, is a common nuisance, and every person acting or aiding therein, or making or being interested in any such bet, stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

CHAPTER XXXVI.

PAWNBROKERS.

§ 402. PAWNBROKING WITHOUT LICENSE.] Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 403. REFUSING TO EXHIBIT STOLEN GOODS.] Every pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

§ 404. SELLING BEFORE DEFAULT.] Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

CHAPTER XXXVII.

OF OTHER INJURIES TO PERSONS.

§ 405. INTOXICATED PHYSICIANS.] Every physician who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act as such physician, to another person, by which the life of such other is endangered, is guilty of a misdemeanor.

§ 406. WILLFULLY POISONING FOOD.] Every person who, willfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in the territorial prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 407. OVERLOADING PASSENGER VESSEL.] Every person navigating any vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel, that by means thereof such vessel sinks or is overset or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor.

§ 408. MISMANAGEMENT OF STEAMBOATS.] Every captain or other person having charge of any steamboat used for the conveyance of passengers or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor.

§ 409. STEAM BOILERS.] Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler or engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

§ 410. FICTITIOUS CO-PARTNERSHIP.] Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a co-partnership name is authorized by law, is guilty of a misdemeanor.

§ 411. COUNTERFEITING TRADE MARKS.] Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

§ 412. KEEPING DIES OF TRADE MARK.] Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trade mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade mark, or of selling the same when made, or affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person; and every person who so uses or sells the same, or who fraudulently uses the genuine trade mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade mark properly belongs, as genuine and original, is guilty of a misdemeanor.

§ 413. SELLING GOODS BEARING COUNTERFEIT.] Every person who sells or keeps for sale any goods upon which any counterfeited trade mark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

§ 414. COLORABLE IMITATIONS.] Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly or in part the same to the eye, or to the ear, as the word or any of the words or tokens used by any other person as his trade mark, and every person who knowingly sells, or keeps or offers for sale, any such bottle, case, box, other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, or exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

§ 415. TRADE MARKS DEFINED.] The words "trade mark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

§ 416. GOODS DEFINED.] The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale.

§ 417. AFFIXING DEFINED.] The offense of affixing a false trade mark to goods is equally complete within the meaning of sections 411, 413 and 414, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper, or other package or vessel, or any cover or stopper thereof, in which such goods are put up.

§ 418. REFILLING OR SELLING BOTTLES.] Whenever any person engaged in manufacturing, bottling, selling in bottles, soda, mineral waters, porter, ale, cider or small beer, has filed and published, in the manner authorized by law, a description of a name, mark or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of, or trafficked in, for every subsequent offense.

§ 419. KEEPING BOTTLES WITH INTENT TO REFILL.] Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed.

§ 420. COMPLAINT—SEARCH—PENALTY.] Whenever any manufacturer or dealer designated by section 418, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe, and does believe, that any of his bottles stamped and registered as mentioned in said section are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer, or vender of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of the law upon search warrants, which are hereby declared to fully relate to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination, finds that such person has been guilty of a violation of section 418, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days.

§ 421. DEFACING MARKS.] Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor.

§ 422. SAME ON LOGS, ETC.] Every person who cuts out or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this territory or lying upon land, is guilty of a misdemeanor.

§ 423. UNLAWFUL DETENTION.] Every officer who, without authority of law, detains any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of his duties, or who violates any provision of the statutes relating to salvage, is guilty of a misdemeanor.

§ 424. FRAUD IN PARTNERSHIP.] Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

§ 425. SOLEMNIZING UNLAWFUL MARRIAGES.] Every minister or magistrate who solemnizes any marriage, where either of the parties is known to him to be within the age of legal consent, or to be an idiot or an insane person, or any marriage to which within his knowledge any legal impediment exists, is guilty of a misdemeanor.

§ 426. UNLAWFUL CONFINEMENT OF LUNATICS.] Every overseer of the poor, constable, keeper of a jail, or other person who confines any idiot, lunatic, or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor.

§ 427. TAKING USURY.] Every person who directly or indirectly receives any interest, discount, or consideration upon the loan or forbearance of any money, goods or things in action greater than is allowed by law, is guilty of a misdemeanor.

§ 428. RECONFINING PERSONS.] Every person who either solely or as a member of a court, in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand dollars to be recovered in a civil action.

§ 429. CONCEALING PERSONS.] Every person having in his custody or power, or under his restraint a party who, by the provisions of the law relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor.

§ 430. ASSISTING SAME.] Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor.

CHAPTER XXXVIII.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 431. PUBLIC NUISANCE DEFINED.] A public nuisance is a crime against the order and economy of the territory, and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission either:

1. Annoys or injures the comfort, repose, health or safety of any considerable number of persons; or,
2. Offends public decency; or,
3. Unlawfully interferes with, obstructs, or tends to obstruct any lake, or any navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,
4. In any way renders life or the use of property uncomfortable.

§ 432. UNEQUAL DAMAGE.] An act which affects a considerable number of persons in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

§ 433. MAINTAINING A NUISANCE—MISDEMEANOR.] Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

§ 434. KEEPING GUNPOWDER.] Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor.

§ 435. THROWING GAS TAR INTO PUBLIC WATERS.] Every person who throws or deposits any gas tar, or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

§ 436. VIOLATIONS OF QUARANTINE LAWS.] Every master of a vessel subject to quarantine or visitation by the health officer, by the provisions of any law of this territory, now in force or that hereafter may be enacted, arrives in any port or at the boat landing of any city or town in this territory, who refuses or omits, either:

1. To proceed with and anchor or land his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject; or,

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 437. OFFENSES BY SHIP MASTER.] Every master of a vessel hailed by a pilot or such officer as may be specified by law, who, either:

1. Gives false information to such pilot or other officer, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel, or permits any person, except a pilot or such officer specified by law, to come on board of his vessel, or unlades or tranships any portion of his cargo before his vessel has been visited and examined by the proper health officers; or,

3. Approaches with his vessel nearer any city or town within this territory than the place of quarantine to which he may be directed, is punishable by imprisonment in the county jail of the county in which the offense was committed, not exceeding one year, or by a fine not exceeding two thousand dollars, or both such fine and imprisonment.

§ 438. LANDING BEFORE VISIT OF HEALTH OFFICERS.] Every person who being on board any vessel at the time of her arrival at any port within this territory, under the provisions of section 436, lands from such vessel, or unlades, or tranships, or assists in unlading or transhipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 439. OTHER RESTRICTIONS.] Every person who goes on board of or has any communication, intercourse or dealing with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority enters the quarantine grounds or anchorage, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officers shall direct, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained for such further time and at such place, as the health officer shall direct.

§ 440. VIOLATING QUARANTINE REGULATIONS.] Every person who having been lawfully ordered by any health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

§ 441. OBSTRUCTING HEALTH OFFICER.] Every person who willfully opposes or obstructs any health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 442. VIOLATION OF HEALTH LAWS] Every person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this code, and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 443. UNLICENSED PILOTING.] Every person not holding a license as pilot under the laws of this territory, or under the laws of either the states of Missouri, Kansas, Iowa or Nebraska, who pilots or offers to pilot any steamboat to or from any port within this territory, is guilty of a misdemeanor.

§ 444. EXCEPTIONS.] The last section applies only to vessels propelled by steam while engaged in conveying freight and passengers, or either, on the Missouri river.

§ 445. PORT WARDEN.] Every person who not being a port warden, assumes or undertakes to act as such, under or by the provisions of any law of this territory, now in force or that may hereafter be enacted, and every person who issues any certificate of a survey on vessels, materials or goods damaged, with the intent to avoid the provisions of the law, is guilty of a misdemeanor.

§ 446. APOTHECARY, WHEN LIABLE.] Every apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

§ 447. RECORD AND WITNESS OF POISON SALE—LABELS.] No druggist, apothecary or other person dealing or trafficking in drugs or medicines, and no person employed as clerk or salesman, by any apothecary or druggist, shall sell or give away any poison or poisonous substances, except to practicing physicians in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the name of the person or persons receiving such poison, and his, her, or their residence together with the name and residence of some person as witness to such sale, excepting upon the written order or prescription of some practicing physician whose name must be attached to such order or prescription. No person shall sell, give away or dispose of any poisonous substance, without attaching to the phial, box or parcel containing such poisonous substance a label with the word "poison" printed or written upon it in plain and legible characters.

§ 448. VIOLATION MISDEMEANOR.] Any person violating any of the provisions of section 446, shall be deemed guilty of a misdemeanor.

§ 449. RECORD TO BE PUBLIC.] Every person whose duty it is by section 446, to keep any book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during business hours, is punishable by fine not exceeding fifty dollars.

§ 450. LAYING OUT POISONS.] Every person who shall lay out strychnine or other poison within the limits of any town, or within one mile of any dwelling house, or any barn, stable, or out-building, used at the time for the keeping or shelter of horses, cattle, sheep or swine, or within one-half mile of any traveled thoroughfare, on the ceded lands of this territory, is guilty of a misdemeanor: *Provided*, Nothing in this section shall be construed to prohibit the putting out at any time of poisoned grain for the purpose of killing gophers.

§ 451. OMITTING TO MARK HAY.] Every person who, in putting up or pressing any bundle of hay for market, omits to put the number of pounds in each bundle or bale so put up for which he sells or offers to sell it for, is guilty of a misdemeanor.

§ 452. INCREASED WEIGHT.] Every person who, by putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels, or packages, by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense.

§ 453. ADULTERATING FOOD.] Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor, or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor.

§ 454. DISPOSING OF TAINTED FOOD] Every person who knowingly sells, or keeps, or offers for sale or otherwise disposes of any article of food, drink, drug or medicine knowing that the same has become tainted, decayed, spoiled or otherwise unwelcome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor.

§ 455. SLUNG SHOT.] Every person who manufactures or causes to be manufactured, or sells, or offers or keeps for sale, or gives or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor.

§ 456. CARRYING OR USING SAME.] Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot or of any similar kind, is guilty of a felony.

§ 457. CONCEALED WEAPONS.] Every person who carries concealed about his person any description of fire-arms, being loaded or partly loaded or any sharp or dangerous weapon such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

§ 458. WILLFUL PRAIRIE FIRES.] Every person who shall willfully set on fire or cause to be set on fire any woods, marshes or prairie, with intention to injure the property of another, shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire.

§ 459. SAME BY NEGLIGENCE—DAMAGES.] Every person who negligently or carelessly sets on fire, or causes to be set on fire, any woods, marshes or prairies, or who, having set the same on fire, or caused it to be done, negligently or carelessly, or without full precaution or efforts to prevent, permits it to spread beyond his control, shall, upon conviction, be fined not exceeding one hundred dollars and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby. One-half of such fine shall, when collected, go to the informer.

§ 460. REFUSING AID AT FIRES.] Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen, to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

§ 461. UNLAWFUL FERRY.] Every person who maintains any ferry for profit or hire upon any waters within this territory, without authority of law, is punishable by a fine not exceeding twenty-five dollars for each time of crossing or running such ferry. Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either.

§ 462. FERRY BOND.] Every person who, having entered into a bond or obligation, as provided by his ferry charter, or any general law on the subject of ferries, to keep and attend a ferry, violates the condition of such bond or obligation, is guilty of a misdemeanor.

§ 463. FAILURE TO RING LOCOMOTIVE BELL.] Every person in charge, as engineer, of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days.

§ 464. DRUNKEN MANAGER.] Every person who, while in charge, as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

§ 465. AGENT'S NEGLECT OF DUTY.] Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

§ 466. GUARDS OF ICE CUTTINGS.] All persons and incorporated companies cutting ice in or upon any waters within the boundaries of this territory, for the purpose of removing such ice for sale, shall surround the cuttings and openings made, with fences of bushes or other guards sufficient to warn all persons of such cuttings and openings.

§ 467. HOW LONG MAINTAINED.] Such fences or guards must be erected at or before the time of commencing such cuttings or openings, and must be maintained until ice has again formed in such openings to the thickness of at least six inches.

§ 468. MISDEMEANOR.] Every person who violates the provisions of the last two sections, is guilty of a misdemeanor.

§ 469. OBSTRUCTING NAVIGATION.] Every person who in any manner obstructs the free navigation of any navigable water course within this territory, is guilty of a misdemeanor.

§ 470. EXPOSING PERSON WITH CONTAGIOUS DISEASE.] Every person who willfully exposes himself or another person, being affected with any contagious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 471. FRAUDS TO AFFECT MARKET PRICE.] Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 472. FALSE STATEMENTS IN NEWSPAPERS.] Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

§ 473. EAVESDROPPING.] Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

§ 474. RACING UPON HIGHWAYS.] Every person driving any conveyance drawn by horses upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

CHAPTER XXXIX.

CRIMES AGAINST THE PUBLIC PEACE.

§ 475. DISTURBING LAWFUL MEETINGS.] Every person, who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as are mentioned in sections 54, 74 and 363 of this code, is guilty of a misdemeanor.

§ 476. RIOT DEFINED.] Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

§ 477. PUNISHMENT OF RIOT.] Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape or arson, was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.
2. If the purpose of the riotous assembly was to resist the execution of any statute of this territory or of the United States, or to obstruct any public officer of this territory or of the United States in the performance of any legal duty, or in serving or executing any legal process, such person is punishable by imprisonment in the territorial prison not exceeding ten years and not less than two.
3. If such person carried, at the time of such riot, any species of firearms, or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in a territorial prison not exceeding ten years and not less than two.
4. If such person directed, advised, encouraged or solicited other persons, who participated in the riot, to acts of force or violence, he is punishable by imprisonment in the territorial prison for not less than three years.
5. In all other cases such person is punishable as for a misdemeanor.

§ 478. ROUT DEFINED.] Whenever three or more persons, acting together, make any attempt or do any act towards the commission of an act which would be riot if actually committed, such assembly is a rout.

§ 479. UNLAWFUL ASSEMBLY.] Whenever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act towards the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace, or excite public alarm, such assembly is an unlawful assembly.

§ 480. PUNISHMENT.] Every person who participates in any rout or unlawful assembly, is guilty of a misdemeanor.

§ 481. WARNING TO DISPERSE.] Every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 482. PRESENT AFTER UNLAWFUL PURPOSE.] Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 483. REFUSING TO ARREST RIOTER.] Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

§ 484. COMBINATIONS TO RESIST PROCESS.] Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

§ 485. PRIZE FIGHT.] Every person who engages in, instigates, encourages or promotes, any ring or prize fight, or any other premeditated fight or contention whether as principal, aid, second, umpire, surgeon, or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor.

§ 486. CHALLENGE TO PRIZE FIGHT.] Every person who challenges another to engage in any such fight as is specified in the last section, every person who accepts any such challenge, every person who knowingly forwards, carries or delivers any such challenge; and every person who bets, stakes or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 487. WHAT IS A CHALLENGE.] Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 485 are deemed a challenge within the meaning of the last section.

§ 488. LEAVING TERRITORY TO ENGAGE IN.] Every person who leaves this territory with the intent to elude any of the provisions of the last three sections, and to commit any act out of this territory, such as is prohibited by them, and who does any act which would be punishable under these provisions, if committed within this territory, is punishable in the same manner as he would have been in case such act had been committed within this territory.

§ 489. PLACE OF TRIAL.] Such person may be indicted and tried in any county within this territory.

§ 490. DUTY OF PEACE OFFICERS] It is the duty of all sheriffs, constables, policemen and watchmen who have reasonable grounds to believe that any offense specified in section 485 is about to be committed within their jurisdiction, to make complaint under the provisions of this act to some magistrate within their jurisdiction.

§ 491. NEGLECT A MISDEMEANOR.] Every sheriff, constable, policeman or watchman, who willfully neglects the duty prescribed by the last section, is guilty of a misdemeanor, and in additton to the punishment prescribed therefor, he forfeits his office.

§ 492. FORCIBLE ENTRY AND DETAINER.] Every person guilty of using, or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and manner allowed by law, is guilty of a misdemeanor.

§ 493. RETURNING TO POSSESSION.] Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

§ 494. UNLAWFUL INTRUSIONS.] Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or village, without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty, or other structure whatever, without such license or authority; and every person who places, erects, or occupies within the bounds of any street or avenue of such city or village, any hut, hovel, shanty, or other structure whatever, is guilty of a misdemeanor.

§ 495. DISCHARGING FIREARMS.] Every person who willfully discharges any species of firearms, air-gun or other weapon, or throws any other missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

§ 496. WITNESSES PRIVILEGE.] No person shall be excused from giving any evidence upon any investigation or prosecution for any of the offenses specified in this chapter, upon the ground that such testimony or evidence might tend to convict him of a crime. But such answer or evidence shall not be received against him upon any criminal proceeding or prosecution.

CHAPTER XL.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE TERRITORY.

§ 497. EMBEZZLEMENTS AND FALSE ACCOUNTS BY OFFICERS.] Every public officer, and every deputy or clerk of any such officer, and every other person receiving any moneys on behalf of, or for account of this territory, or of any department of the government of this territory, or of any bureau or fund created by law, and in which this territory, or the people thereof, are directly or indirectly interested, who either:

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money received by him as such officer, clerk or deputy, or otherwise, on behalf of this territory, or the people thereof, or in which they are interested; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any moneys so received by him, on behalf of the territory, or the said people, or in which they are interested; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Willfully omits or refuses to pay over to this territory or its officer or agent authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same,

Is guilty of a felony.

§ 498. OTHER VIOLATION.] Every officer or other person mentioned in the last section who willfully disobeys any provisions of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor.

§ 499. OFFICER'S FRAUD.] Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

§ 500. REFUSAL TO PERFORM DUTY.] Every register of deeds, judge of the probate court, district attorney, county commissioner, sheriff, coroner or county superintendent of public schools, who willfully fails or refuses to perform the duties of his office according to law, is guilty of a misdemeanor.

§ 501. OBSTRUCTING COLLECTING REVENUE.] Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which, or in any part of which the people of this territory are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 502. OTHER OFFICERS.] The provisions of section 500 shall also apply to county treasurers, justices of the peace, and all other county and precinct officers.

§ 503. TERRITORIAL OFFICERS] Every territorial auditor, territorial treasurer, superintendent of public instruction for this territory, or any other territorial officer, who willfully neglects or refuses to perform the duties of his office, as prescribed by law, is guilty of a misdemeanor.

§ 504. AUCTIONEER TO HAVE BUT ONE PLACE.] No auctioneer, in any town or county of this territory shall at one time have more than one place for carrying on the general business of an auctioneer.

§ 505. SELLING AT OTHER PLACE.] No such auctioneer shall expose to sale by public auction any articles liable to auction duties at any other place than that so designated, except goods sold in original packages, as imported pictures, household furniture, libraries, stationery, and such bulky articles as have usually been sold in warehouses, or in the public streets or on the wharves.

§ 506. PUNISHMENT.] A violation of either of the last two sections is punishable by a fine not exceeding two hundred and fifty dollars for each offense.

§ 507. FRAUD IN QUALITY.] Every person carrying on, interested in or employed about, the business of selling property or goods by auction, who sells any goods or property in a damaged condition, which he offers as sound or in a good condition, is guilty of a misdemeanor.

§ 508. SALES MUST BE BY DAY, EXCEPT.] All sales of goods by public auction by a licensed auctioneer shall be made in the day time between sunrise and sunset, unless otherwise authorized by the law under which he holds his license, excepting:

1. Books, prints, pictures or stationery.

2. Goods sold in the original packages as imported, according to a printed catalogue, of which samples shall have been opened and exposed to public view at least one day previous to the sale. Every person who violates the provisions of this section, is guilty of misdemeanor; and in addition to the punishment prescribed therefor by law, is forever disqualified after his conviction therefor, from being licensed to act as an auctioneer within this territory.

§ 508. OMITTING TO ACCOUNT.] Every auctioneer, and every partner or clerk of an auctioneer, and every person whatever in any way connected in business with an auctioneer, who willfully omits to render any semi-annual or other account, by law required to be rendered, at the time or in the manner prescribed by law, or who willfully omits to pay over any duties legally payable by him at the time and in the manner prescribed by law, is guilty of a misdemeanor.

§ 510. AUCTIONEER COMMITTING FRAUD.] Every auctioneer, and every partner or clerk of any auctioneer, and every person whatever in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this territory relating to auctions, now in force, or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby.

§ 511. FALSE BILL OF LADING.] Every person whose duty it may be to deliver to any collector of tolls upon any canal that hereafter may be constructed and owned by this territory, a bill of lading of any property transported upon any such canal, who knowingly delivers a false bill of lading as true, or makes or signs a false bill of lading intending to be delivered as true, is punishable by imprisonment in the territorial prison not exceeding one year, or by a fine not exceeding five times the value of any property omitted in such bill, or both.

§ 512. WEIGH MASTER MAKING FALSE ENTRY.] Every weigh master upon any canal that may hereafter be constructed and owned by this territory, and every clerk of such weigh master, who knowingly makes a false entry of the weight of any boat, or cargo of any boat navigating such canal, or who knowingly makes a false certificate of the light weight of any boat, is guilty of a misdemeanor.

§ 513. INJURING PUBLIC BUILDINGS.] Every person who willfully burns, destroys, or injures any public building or improvement in this territory, is punishable by imprisonment in the territorial prison not exceeding five years.

§ 514. SEIZING MILITARY STORES.] Every person who enters any fort, magazine, arsenal, armory, arsenal yard, or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this territory, and every person who enters any such place with intent so to do, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 515. FALSE STATEMENT ABOUT TAXES.] Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty of a misdemeanor.

CHAPTER XLI.

ARSON.

§ 516. ARSON DEFINED.] Arson is the willful and malicious burning of a building, with intent to destroy it.

§ 517. BUILDING DEFINED.] Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to, or connected with an erection so adapted, is a "building" within the meaning of the last section.

§ 518. INHABITED BUILDING.] Any building is deemed an "inhabited building" within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night.

§ 519. NIGHT DEFINED.] The words "night time" in this chapter include the period between sunset and sunrise.

§ 520. BURNING DEFINED.] To constitute a burning within the meaning of section 516 it is not necessary that the building set on fire should be destroyed. It is sufficient that fire is applied so as to take effect upon the substance of the building.

§ 521. OWNERSHIP.] To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building, or any part thereof.

§ 522. VARIANCE IN PROOF.] An omission to designate, or error in designating in an indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the prisoner to prepare his defense.

§ 523. MALICE.] Malice sufficient to constitute arson is inferred from proof that the prisoner committed an act of burning a building, and that some other person was rightfully in possession of, or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy or should have intended to injure any person.

§ 524. NO INTENT TO DESTROY.] But the burning of a building under circumstances which shows beyond a reasonable doubt that there was no intent to destroy it, is not arson.

§ 525. CONTIGUOUS BUILDINGS.] Where any appurtenance to any building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other.

§ 526. DEGREES OF ARSON.] Arson is distinguished into four degrees.

§ 527. FIRST DEGREE.] Maliciously burning in the night time an inhabited building, in which there is at the time some human being, is arson in the first degree.

§ 528. APPURTENANCES TO BUILDINGS.] No warehouse, barn, shed, or other outhouse, is a subject of arson in the first degree, unless it is immediately connected with, and forms part of, an inhabited building.

§ 529. ARSON IN SECOND DEGREE.] Maliciously burning in the day time an inhabited building, in which there is at the time some human being, is arson in the second degree.

§ 530. IN NIGHT TIME WHEN SAME.] Maliciously burning in the night time a building, not an inhabited building, but adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it be not in fact injured by such burning, is arson in the second degree.

§ 531. IN DAY TIME WHEN THIRD DEGREE.] Maliciously burning in the day time a building, the burning of which in the night time would be arson in the second degree, is arson in the third degree.

§ 532. IN NIGHT-TIME.] Maliciously burning in the night time any building, not the subject of arson in the first or second degree, including any house for public worship, school-house or public building, belonging to the people of this territory, or to any county, city, town or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill or manufactory, is arson in the third degree.

§ 533. FOURTH DEGREE DEFINED.] Maliciously burning in the day time any building the burning of which in the night time would be arson in the third degree, is arson in the fourth degree.

§ 534. PUNISHMENT OF ARSON.] Arson is punishable by imprisonment in the territorial prison, as follows:

1. Arson in the first degree, for any term not less than ten years.

2. Arson in the second degree, not exceeding ten years and not less than seven years.

3. Arson in the third degree, not exceeding seven years and not less than four years.

4. Arson in the fourth degree, not exceeding four years and not less than one year; or by imprisonment in a county jail not exceeding one year.

CHAPTER XLII.

BURGLARY AND HOUSE-BREAKING.

§ 535. BURGLARY IN FIRST DEGREE.] Every person who breaks into and enters in the night time the dwelling-house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or,

2. By breaking in any other manner, being armed with a dangerous weapon, or being assisted or aided by one or more confederates, then actually present; or,

3. By unlocking an outer door by means of false keys, or by picking the lock thereof,

Is guilty of burglary in the first degree.

§ 536. IN SECOND DEGREE.] Every person who breaks into any dwelling-house in the day time under such circumstances as would have constituted the crime of burglary in the first degree if committed in the night time, is guilty of burglary in the second degree.

§ 537. SAME.] Every person who, having entered the dwelling-house of another in the night time, through an open outer door or window, or other aperture not made by such person, breaks any inner door, window, partition, or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree.

§ 538. SAME.] Every person who, being lawfully in any dwelling-house, breaks in the night time any inner door of the same house, with intent to commit any crime, is guilty of burglary in the second degree.

§ 539. BURGLARY, THIRD DEGREE.] Every person who breaks into any dwelling house in the night time, with intent to commit a crime, but under such circumstances as do not constitute the offense of burglary in the first degree, is guilty of burglary in the third degree.

§ 540. OTHER BURGLARIES IN THIRD DEGREE.] Every person who breaks and enters, in the day or in the night time, either:

1. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

2. Any building or any part of any building, booth, tent, railroad car, vessel, or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony,

Is guilty of burglary in the third degree.

§ 541. BURGLARY IN FOURTH DEGREE.] Every person who breaks and enters the dwelling house of another, by day or by night, in such manner as not to constitute any burglary specified in the preceding section, with intent to commit a crime, is guilty of burglary in the fourth degree.

§ 542. SAME.] Every person, who, having committed any crime in the dwelling house of another, breaks in the night time, any outer door, window shutter or other part of such house, to get out of the same, is guilty of burglary in the fourth degree.

§ 543. PUNISHMENT.] Burglary is punishable by imprisonment in the territorial prison as follows:

1. Burglary in the first degree, for any term not less than ten years.
2. Burglary in the second degree, not exceeding ten years, and not less than five.
3. Burglary in the third degree, not exceeding five years.
4. Burglary in the fourth degree, not exceeding three years.

§ 544. BURGLAR'S IMPLEMENTS.] Every person, who, under circumstances not amounting to any felony, has in his possession in the night time any dangerous, offensive weapon or instrument whatever, or any picklock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building or part of any building, booth, tent, railroad car, vessel or other structure or erection, and to commit any felony therein, is guilty of a misdemeanor.

§ 545. ENTERING OTHER BUILDINGS.] Every person, who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel or other structure or erection with intent to commit any felony, larceny or malicious mischief, is guilty of a misdemeanor.

§ 546. DWELLING HOUSE DEFINED] The term "dwelling house," as used in this chapter, includes every house or edifice any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

§ 547. NIGHT TIME DEFINED.] The words "night time" in this chapter, include the period between sunset and sunrise.

CHAPTER XLIII.

FORGERY AND COUNTERFEITING.

§ 548. FORGERY OF WILLS, &C] Every person, who, with intent to defraud, forges, counterfeits or falsely alters:

1. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed or in any way charged or affected; or,

2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or

given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or,

3. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree.

549. FORGERY OF PUBLIC SECURITIES.] Every person who, with intent to defraud, forges, counterfeits, or falsely alters:

1. Any certificate or other public security, issued or purporting to have been issued under the authority of this territory, by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or,

2. Any certificate of any share, right or interest in any public stock created by virtue of any law of this territory, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability of the people of this territory, either absolute or contingent, issued or purporting to have been issued by any public officer; or,

3. Any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest,

Is guilty of forgery in the first degree.

§ 550. OF PUBLIC AND CORPORATE SEALS.] Every person who, with intent to defraud, forges or counterfeits the great or privy seal of this territory, the seal of any public office authorized by law, the seal of any court of record, including judge of probate seals, or the seal of any corporation created by the laws of this territory or of any state, government or country, or any other public seal authorized or recognized by the laws of this territory, or of any other state, government or country, or who falsely makes, forges or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 551. FORGERY OF RECORDS AND OFFICIAL RETURNS.] Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or,

2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,

3. The return of any officer, court or tribunal to any process of any court,

Is guilty of forgery in the second degree.

§ 552. MAKING FALSE ENTRIES.] Every person who, with intent to defraud, falsely makes, forges or alters any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, is guilty of forgery in the second degree.

§ 553. False certificates.] If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

§ 554. False bank note plates.] Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt, issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this territory or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures, or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with the intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

§ 555. Imitation of a genuine.] Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved; or,

2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

§ 556. Sale of forged evidences.] Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration, with the like knowledge and intent, is guilty of forgery in the second degree.

§ 557. Having in possession.] Every person, who, with intent to defraud, has in his possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt, issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this territory or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree.

§ 558. Other forged instruments.] Every person, who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered, with intent to injure or defraud by uttering the same as true, or as false, or by causing the same to be so uttered, is guilty of forgery in the fourth degree.

§ 559. Issuing spurious certificates.] Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who, within this territory, willfully signs or procures to be signed, with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

§ 560. Reissuing cancelled certificates.] Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who within this territory willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or cancelled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

§ 561. False evidences of debt.] Every officer, and every agent of any corporation, municipal or otherwise, of any joint stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government or country, who within this territory willfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

§ 562. COUNTERFEITING COIN.] Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this territory, is guilty of forgery in the second degree.

§ 563. SAME.] Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the third degree.

§ 564. FORGING PROCESS OF COURT.] Every person who, with intent to defraud, falsely makes, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate or officer, or being, or purporting to be, any pleading, proceeding, bond or undertaking filed or entered in any court, or being, or purporting to be, any certificate order or allowance by any competent court or officer, or being, or purporting to be, any license or authority authorized by any statute; or,

2. Any instrument or writing being or purporting to be, the act of another, by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false making, altering, forging or counterfeiting, any person may be affected, bound, or in any way injured in his person or property,

Is guilty of forgery in the third degree.

§ 565. FALSE ENTRIES IN PUBLIC BOOKS.] Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the auditor of this territory, or in the office of the treasurer of this territory, or of any county treasurer, by which any demand or obligation, claim right or interest, either against or in favor of the people of this territory, or any county or town, or any individual, is, or purports to be, discharged, dimished, increased, created, or in any manner affected, is guilty of forgery in the third degree.

§ 566. FORGING PASSAGE TICKETS.] Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

§ 567. FORGING UNITED STATES STAMPS.] Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

§ 568. MAKING FALSE ENTRIES IN CORPORATE BOOKS.] Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this territory, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is, or purports to be, discharged, diminished, increased, created, or in any manner, affected, is guilty of forgery in the third degree.

§ 569. SAME.] Every person who, being a member or officer, or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership, or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree.

§ 570. COUNTERFEIT COIN.] Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same as true or as false, or by causing the same to be so uttered or passed, is guilty of forgery in the fourth degree.

§ 571. PUNISHMENT OF FORGERY.] Forgery is punishable by imprisonment in the territorial prison as follows:

1. Forgery in the first degree, by imprisonment not less than ten years.
2. Forgery in the second degree, not exceeding ten years, and not less than five.
3. Forgery in the third degree, not exceeding five years.
4. Forgery in the fourth degree, by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year.

§ 572. UTTERING FORGED INSTRUMENT OR COIN.] Every person who, with intent to defraud, utters or publishes as true any forged, altered or counterfeited instrument, or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is guilty of forgery in the same degree as if he had forged, altered, or counterfeited the instrument or coin so uttered, except as in the next section specified.

§ 573. EXCEPTION.] If it appears on the trial of the indictment, that the accused received such forged or counterfeited instrument or coin from another, in good faith, and for a good and valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, the jury may find the defendant guilty of forgery in the fourth degree.

§ 574. FRAUDULENTLY SIGNING OWN NAME.] Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

§ 575. FRAUDULENTLY INDORSING OWN NAME. Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is indorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the indorsement of a person bearing a different name from his own.

§ 576. ERASURES AND OBLITERATIONS.] The total or partial erasure, or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

§ 577. WRITING AND WRITTEN DEFINED.] Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

§ 578. FICTITIOUS NAMES.] The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstand- there never was any such person in existence.

§ 579. REMOVING OR DESTROYING MORTGAGED CHATTELS.] Every mortgagor of personal property, or his legal representatives who while his mortgage thereof remains in force, and unsatisfied, willfully destroys, removes, conceals, sells or in any manner disposes of or materially injures the property or any part thereof, covered by such mortgage, without the written consent of the then holder of such mortgage, shall be deemed guilty of felony, and shall upon conviction, be punished by imprisonment in the territorial prison for a period not exceeding three years, or in the county jail not exceeding one year, and by fine not exceeding five hundred dollars.

CHAPTER XLIV.

LARCENY.

§ 580. LARCENY DEFINED.] Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof.

§ 581. LARCENY OF LOST PROPERTY.] One who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny.

§ 582. GRAND AND PETIT LARCENY.] Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny.

§ 583. GRAND AND PETIT LARCENY.] Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding twenty dollars.
2. When such property, although not of value exceeding twenty dollars in value, is taken from the person of another.

Larceny in other cases is petit larceny.

§ 584. PUNISHMENT OF GRAND LARCENY.] Grand larceny is punishable by imprisonment in the territorial prison not exceeding five years.

§ 585. PETIT LARCENY.] Petit larceny is punishable as a misdemeanor.

§ 586. GRAND LARCENY IN HOUSE OR VESSEL.] When it appears upon the trial of an indictment for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender may be punished by imprisonment in the territorial prison not exceeding eight years.

§ 587. IN NIGHT TIME FROM PERSON.] When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender may be punished by imprisonment in the territorial prison not exceeding ten years.

§ 588. LARCENY OF WRITTEN INSTRUMENT.] If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, of which in any contingency might be collected thereon, or the value of the property, the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

§ 589. VALUE OF PASSAGE TICKET.] If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage, are usually sold by the proprietors of such conveyance, shall be deemed the value of such ticket.

§ 590. SECURITIES.] All the provisions of this chapter shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

§ 591. SEVERED FIXTURES.] All the provisions of this chapter shall apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if such thing had been severed by another person at some previous time.

§ 592. STEALING WRECKED GOODS.] Every person who takes away any goods from any stranded or wrecked steamboat or other vessel, or any goods floating on the water, or goods cast by the water upon the shore, or goods lodged upon drifts, snags or other obstructions in a water course, or goods found in any creek, or who knowingly becomes possessed of any such, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or the coroner of the county where the same were found, is guilty of a misdemeanor.

§ 593. RECEIVING STOLEN PROPERTY.] Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever, that has been stolen from any other, knowing the same to have been stolen, is punishable by imprisonment in the territorial prison not exceeding five years, or in the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 594. FRAUDULENT CONSUMPTION OF GAS.] Every person, who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same, or causes it to be connected with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter provided for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter, or obstructs its action, is guilty of a misdemeanor.

§ 595. LARCENY OUT OF TERRITORY.] Every person who steals the property of another in any other state or country, and brings the same into this territory, may be convicted and punished in the same manner as if such larceny had been committed in this territory; and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

CHAPTER XLV.

EMBEZZLEMENT.

§ 596. EMBEZZLEMENT DEFINED.] Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted.

§ 597. WHEN OFFICER GUILTY OF.] If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

§ 598. WHEN CARRIER OR OTHER GUILTY OF.] If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safekeeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

§ 599. WHEN TRUSTEE, ETC., GUILTY OF.] If any person, being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

§ 600. BAILEE GUILTY OF.] If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not.

§ 601. CLERK OR SERVANT.] If any clerk or servant of any private person or copartnership or corporation, except apprentices and persons within the age of eighteen years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement.

§ 602. DISTINCT TAKING NOT NECESSARY.] A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions, is sufficient.

§ 603. EVIDENCE OF DEBT.] Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not.

§ 604. CLAIM OF TITLE.] Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay demand held against him.

§ 605. INTENT TO RESTORE NO DEFENSE.] The fact that the accused intended to restore the property embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

§ 606. MITIGATION OF PUNISHMENT.] Whenever it is made to appear that prior to any information laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

§ 607. PUNISHMENT.] Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

CHAPTER XLVI.

EXTORTION.

§ 608. EXTORTION DEFINED.] Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

§ 609. WHAT THREATS CONSTITUTE EXTORTION.] Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,

2. To accuse him or any relative of his or member of his family, of any crime; or,

3. To expose, or impute to him, or them, any deformity or disgrace; or,

4. To expose any secret affecting him or them.

§ 610. PUNISHMENT.] Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in the territorial prison not exceeding five years.

§ 611. SAME.] Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

§ 612. OBTAINING SIGNATURE.] Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

§ 613. SENDING THREATENING LETTERS.] Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in section 609, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

§ 614. ATTEMPTS TO EXTORT MONEY.] Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section 609, to extort money or other property from another, is guilty of a misdemeanor.

CHAPTER XLVII.

FALSE PERSONATION AND CHEATS.

§ 615. FALSELY PERSONATING ANOTHER.] Every person who falsely personates another, and in such assumed character, either:

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other person; or,

2. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

4. Does any other act, whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person,

Is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 616. FALSELY PERSONATING AND RECEIVING.] Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 617. PERSONATING OFFICERS AND OTHERS.] Every person who falsely personates any public officer, civil or military, or any fireman, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge, by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, is guilty of a misdemeanor.

§ 618. OBTAINING PROPERTY BY FALSE PRETENSES.] Every person, who, with intent to cheat or defraud another, dsignedly, by color, or aid of any false token or writing, or other false pretence, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

§ 619. FOR CHARITABLE PURPOSES.] Every person who designedly, by color or aid of any false token or writing, or other false pretence, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

§ 620. FALSE PRETENSES.] If the false token by which any money or property is obtained in violation of sections 618 and 619, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the territorial prison not exceeding seven years, instead of by the punishments prescribed by those sections.

§ 621. USING FALSE CHECK.] The use of a matured check, or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

§ 622. MOCK AUCTIONS.] Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, and, in addition thereto, he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this territory.

CHAPTER XLVIII.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 623. WILLFULLY DESTROYING VESSEL.] Every captain or other officer or person in command or charge of any vessel, who within this territory willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison for life.

§ 624. SAME.] Every person other than such as are embraced within the last section, who is guilty of any act therein prohibited, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three.

§ 625. INTENT TO WRECK VESSEL.] Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three.

§ 626. MAKING FALSE MANIFEST.] Every person guilty of preparing, making or subscribing, any false or fraudulent manifest, invoice, bill of lading, boat's register or protest, with intent to defraud another, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER XLIX.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 627. DESTROYING PROPERTY INSURED.] Every person who willfully burns, or in any other manner injures or destroys any property whatever which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, is punishable by imprisonment in the territorial prison not exceeding seven years, and not less than four.

§ 628. FALSE PROOFS.] Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER L.

FALSE WEIGHTS AND MEASURES.

§ 629. FALSE WEIGHTS AND MEASURES.] If any person with intent to defraud, use a false balance, weight or measure, in the weighing or measuring of any thing whatever, that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged, or given in payment, he shall be punished by fine not exceeding one hundred dollars, nor less than five dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages.

§ 630. RETAINING SAME.] Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, shall be punished as therein provided.

§ 631. Authorized to be seized.] Every person who is authorized or enjoined by law to arrest another person for a violation of sections 629 and 630, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 632. May be tested and destroyed.] The magistrate to whom any weight or measure is delivered pursuant to the last section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

§ 633. Shall be destroyed—when.] Upon the conviction of the accused, such district attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 634. Stamping false weight or tare.] Every person who knowingly marks or stamps false or short weight, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

CHAPTER LI.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

§ 635. Fraudulent conveyance.] Every person who, being a party to any conveyance or assignment of any real or personal property, or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

§ 636. Fraudulent removal of property.] Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

§ 637. Assignments—when prohibited.] Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor, or creditors, upon any trust or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

§ 638. FRAUDS IN BANKRUPTCY.] Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provisions of any law now in force, or that may hereafter be enacted, either:

1. Fraudulently presents, or authorizes to be presented on his behalf, such application, in a case in which it is not authorized by law; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain any false statement; or,

3. Fraudulently makes and exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or,

4. Practices any fraud upon any creditor, with intent to induce him to petition for, or consent to such discharge; or,

5. Conspires with or induces any person fraudulently to unite as creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

CHAPTER LII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS, IN THEIR MANAGEMENT.

§ 639. FRAUD IN SUBSCRIPTIONS FOR STOCK.] Every person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed; and every person who signs, to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 640. FRAUDS IN PROCURING ORGANIZATION.] Every officer, agent or clerk, of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

§ 641. UNAUTHORIZED USE OF NAMES.] Every person, who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 642. MISCONDUCT OF DIRECTORS.] Every director of any stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either:

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in, and required to be paid, or with the intent of providing the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with the intent of enabling any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock; or,

6. To receive any such shares in payment or satisfaction of any debt due to such corporation; or,

7. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds or other evidences of debt issued by such other corporation,

Is guilty of a misdemeanor.

§ 643. SAME IN BANKS.] Every director of any corporation having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either:

1. To make any loan, or discount, by which the whole amount of the loans and discounts of the corporation is made to exceed three times its capital stock then paid in and actually possessed; or,

2. To make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, to an amount exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed,

Is guilty of a misdemeanor.

§ 644. LOANS NOT INVALID.] Nothing in the last section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

§ 645. SALE, &C., OF BANK NOTES.] Every officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 646. CIRCULATING EXCESS OF BANK NOTES.] Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 647. OFFICER MAKING GUARANTEE OR INDORSEMENT.] Every officer or agent of any banking corporation, who makes or delivers any guarantee or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

§ 648. OVERDRAWING ACCOUNT.] Every officer, agent, teller, clerk or servant of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes or funds of such bank, is guilty of a misdemeanor.

§ 649. OMITTING TO ENTER RECEIPT.] Every director, officer or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor.

§ 650. DESTROYING OR FALSIFYING BOOKS.] Every director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 651. PUBLISHING FALSE REPORTS.] Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in making, or publishes, any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in sections 640 and 641, or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

§ 652. REFUSING TO PERMIT INSPECTION.] Every officer or agent of any corporation having or keeping an office within this territory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 653. INSOLVENCIES DEEMED FRAUDULENT.] Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 654. HOW PUNISHABLE.] In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

§ 655. VIOLATION OF DUTY.] Every director of any moneyed corporation, who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 656. CONTRACTING DEBT, EXCEEDING MEANS.] Every officer, agent or stockholder of any railroad company who knowingly assents to, or has any agency in contracting, any debt, by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it, at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

§ 657. DEBT NOT INVALID.] The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

§ 658. DIRECTOR PRESUMED TO HAVE KNOWLEDGE.] Every director of a corporation, or joint stock association, is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter.

§ 659. WHEN PRESUMED TO HAVE ASSENTED.] Every director of a corporation, or joint stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in viloation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 660. SAME, WHEN ABSENT.] Every director of a corporation, or joint stock association, although not present at a meeting of the directors, at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause, or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 661. FOREIGN CORPORATIONS.] It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business, or keeping an officer therefor, within this territory.

§ 662. DIRECTOR DEFINED.] The term director, as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or known by law.

CHAPTER LIII.

FRAUDS IN THE SALE OF PASSAGE TICKETS.

§ 663. PASSAGE TICKETS—TO BE SOLD BY WHOM.] No person except the persons designated in section 670, shall issue or sell or offer to sell, within this territory, any passage ticket, or any instrument given or purporting to give any right, either absolutely or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent of the owners or consignees of such vessel, or of the company running such train, and no person is deemed an authorized agent of such owners, consignees or company, within the meaning of this chapter, unless he has been by them duly appointed by an authority in writing, and which designates the name of the company, line, vessel or railroad for which such person is authorized to act as agent, together with the street and number of the street, and the city, town or village in which his office shall be kept, for the sale of passage tickets.

§ 664. SAME—RESTRICTIONS.] No persons except the persons designated in section 670 shall, within this territory, ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railroad train, or for the procurement of any ticket, or instrument giving or purporting to give any right, either absolutely, or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell any such ticket or instrument, or ask, take or receive any consideration for any such passage or conveyance, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the preceding section, nor for a sum exceeding the price charged at the time of such sale, by the company, owners or consignees of the vessel or railroad referred to in such ticket. Nor shall any such ticket or instrument be issued or sold, which purports to entitle a person to a passage by any mode of conveyance, or to any place of destination, or by any route, vessel or train, other than the one bargained for.

§ 665. UNLAWFULLY PROCURING TICKETS.] No person other than an agent appointed, as provided in section 663, shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument for the purpose, or under the pretense of procuring any ticket, or instrument mentioned in section 663, upon any company or line, vessel or railroad train therein mentioned. And every such order sold or offered for sale by any agent, must be directed to the company, owners or consignees at their office.

§ 666. PUNISHMENT.] Every person guilty of a violation of any of the provisions of the preceding sections of this chapter, is punishable by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not less than six months.

§ 667. CONSPIRING TO SELL PASSAGE TICKETS.] All persons who conspire together to sell or attempt to sell, to any person, any passage ticket, or other instrument mentioned in section 663 and 665, in violation of those sections, and all persons who, by means of any such conspiracy obtain, or attempt to obtain any money or other property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in the territorial prison not exceeding five years.

§ 668. CONSPIRATORS MAY BE INDICTED.] Persons guilty of violating the last section, may be indicted and convicted for a conspiracy, notwithstanding the object of such conspiracy has been executed.

§ 669. CERTAIN OFFICES DECLARED DISORDERLY HOUSES.] All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons, associating together for the purpose of violating any of the provisions of this chapter, are punishable by imprisonment in a county jail for a period not exceeding six months, and not less than three months.

§ 670. WHO ALLOWED TO SELL TICKETS.] The provisions of this chapter do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon, nor do they prevent the purser or clerk of any vessel or station master upon any railroad, or other ticket agent of any vessel or railroad, from selling in his office on board of such vessel, or in any station on such railroad, any passage tickets upon such vessel or railroad, nor do they prevent any conductor upon any railroad from selling any passage tickets upon the trains of such railroad.

§ 671. DELAY IN DEPARTURE OF VESSELS.] Whenever the departure of any vessel, for a passage on board of which, to a port without this territory, any ticket or instrument above mentioned has been sold, is delayed more than two days after the day of departure mentioned in such ticket, the person holding such ticket is entitled to his board and lodging in such vessel without any additional charge, from the second day after the day named for departure until the actual departure of such vessel, and is also entitled to receive from the owners or consignees of such vessel fifty cents per day for each day of such detention. And in case of refusal on the part of the owners, consignees or master of the vessel so detained, to comply with this section, the person holding such ticket is entitled to recover back from the owners or consignees the amount of passage paid by him, together with his damages for such detention, not exceeding fifty dollars.

§ 672. PASSAGE TICKETS—REQUISITES.] Every ticket or instrument issued as evidence of a right of passage upon the Missouri river, from any port in this territory, to any port of any other state or territory, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for any such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

§ 673. NOT FILLED OUT—MISDEMEANOR.] Every person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 674. REQUISITES OF INDICTMENT.] No indictment or conviction under any provision of the preceding sections of this chapter, for the sale, attempted sale, issuing or delivering of any ticket, instrument, certificate, order or receipt, is defective, because such ticket, instrument, certificate, order or receipt is not made or filled out according to the requirements of the last section.

§ 675. COMPANY DEFINED.] The term company, as used in this chapter, includes all corporations, whether created under the laws of this territory, or of those of any other state or nation.

§ 676. FOREIGN RAILROAD COMPANIES.] The provisions of this chapter do not permit railroad companies incorporated in any other state to sell passage tickets under this chapter in this territory; nor do they permit the owners or agents of any vessel to sell tickets for or on behalf of any such railroad company, unless such agent be a resident of this territory.

CHAPTER LIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 677. BILLS OF LADING.] Every person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as express in such bill of lading, receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 678. WAREHOUSE RECEIPTS.] Every person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 679. EXCEPTIONS.] No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

§ 680. DUPLICATE RECEIPTS.] Every person mentioned in sections 677 and 678, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 681. SELLING GOODS SO RECEIVED.] Every person mentioned in sections 677 and 678 who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 682. BILL OF LADING OR RECEIPT MUST BE CANCELED WHEN.] Every person, such as mentioned in section 678, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 683. Do not apply.] The last two sections do not apply where property is demanded by virtue of process of law.

CHAPTER LV.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES AND TELEGRAPHS.

§ 684. Injuries to railroads.] Every person who maliciously, either:

1. Removes, displaces, injures or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any branch, branchway, or turnout connected with any railroad,

Is punishable by imprisonment in the territorial prison not exceeding four years, or in a county jail not less than six months.

§ 685. Cases where death ensues.] Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the territorial prison for not less than four years.

§ 686. Injuries to highways, etc.] Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of felony.

§ 687. Obstructing highway.] Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred dollars, and shall be liable for all damages to person or property by reason of the same.

§ 688. Toll houses and turnpike gates.] Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of felony.

§ 689. Mile boards and guide-posts.] Every person who removes or injures any mile board, mile stone or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

§ 690. Injuring telegraph.] Every person who maliciously takes down, removes, injures or obstructs any line of telegraph or any part thereof, or appurtenance or apparatus therewith connected, or severs any wire thereof, or fraudulently intercepts any message in its passage over such wire, is guilty of a misdemeanor.

CHAPTER LVI.

OF MALICIOUS MISCHIEF.

§ 691. MALICIOUS MISCHIEF.] Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

§ 692. FOLLOWING SECTION NOT RESTRICTIVE.] The specification of the acts enumerated in the following sections of this chapter, is not intended to restrict or qualify the interpretation of the last section.

§ 693. POISONING CATTLE.] Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 694. KILLING, MAIMING OR TORTURING ANIMALS.] Every person who maliciously kills, maims or wounds any animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

§ 695. ABUSING STOCK.] Every person who shall willfully or negligently maltreat or abuse any domestic animal by exposure to heat or cold, or by deprivation of food or water, or by leaving hitched in the open air during cold weather or storm, or in the night time, shall, upon conviction, be fined not exceeding twenty-five dollars. Any officer finding an animal so maltreated or abused, shall cause the same to be taken care of, and the charges therefor shall be a lien upon such animal, to be collected thereon as upon a pledge.

§ 696. FIGHTING ANIMALS.] Every person who maliciously, or for any bet, stake or reward, instigates, encourages or promotes any fight between animals, or instigates or encourages any animal to attack, bite, wound or worry another, is guilty of a misdemeanor.

§ 697. KEEPING HOUSES, PITS, ETC.] Every person who keeps any house, pit, or other place, to be used in permitting any fight between animals or in any other violation of the last section, is guilty of a misdemeanor.

§ 698. WOUNDING OR TRAPPING BIRDS IN CEMETERY.] Every person who, within any public cemetery or burying ground, wounds or traps any birds or destroys any bird's nest, or removes any eggs or young birds from any nest; and every person who buys or sells, or offers or keeps for sale, any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each offense, recoverable by a civil action in any justice's court within the county where the offense is committed, brought in the name of any person making a complaint. Such fine shall be applied to the support of common schools of such county.

§ 699. BURNING BUILDINGS, GRAIN, ETC.] Every person who willfully burns any building not the subject of arson, any stack of grain of any kind, or of any hay, any growing or standing grain, grass, trees or fence, not the property of such person, is punishable by imprisonment in the territorial prison not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year.

§ 700. INJURING HOUSES OF WORSHIP.] Every person who willfully breaks, defaces, or otherwise injures any house of worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

§ 701. USING GUNPOWDER, ETC.] Every person who maliciously, by the explosion of gunpowder, or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three.

§ 702. ENDANGERING HUMAN LIFE.] Every person who places in, upon, under, against or near to any building any gunpowder or other explosive substance, with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of felony.

§ 703. MALICIOUS INJURIES TO FREEHOLDS.] Every person who willfully commits any trespass, by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or,

2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or,

3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or,

4. Digging, taking or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner, or legal occupant thereof, any earth, soil or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property; or,

5. Digging, taking or carrying away from any land in any incorporated city or town of this territory, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil, or stone, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property,

Is guilty of a misdemeanor.

§ 704. INJURING TIMBER, FENCES, ETC.] Every person who shall wantonly or maliciously cut, dig up or injure any timber set out, planted, cultivated, or growing naturally, or who shall wantonly or maliciously open, let down, throw down or prostrate any fence, gate or bars belonging to any enclosure of any description of cultivated and growing timber, or tears down or opens any such fence, gate or bars, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment, and shall be liable in damages to the party injured.

§ 705. INJURING STANDING CROPS, ETC.] Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

§ 706. FRUIT AND MELONS.] Every person who maliciously or mischievously, enters in the day time, the inclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy or carry away, or having lawfully entered or gone upon, does afterward wrongfully knock off, pick, destroy or carry away any apples, peaches, pears, plums, grapes or other fruit, melons, or flowers of any tree, shrub, bush or vine, shall be punished by fine not exceeding one hundred dollars, and not less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 707. SAME—NIGHT TIME.] Every person who shall, maliciously or mischievously, enter the inclosure, or go upon the premises of another in the night time, and knock off, pick, destroy or carry away, any apples, peaches, pears, plums, grapes or other fruit, melons or flowers, of any tree, shrub, bush or vine, or having entered the inclosure or gone upon the premises of another, in the night time, with the intent to knock off, pick, destroy or carry away, any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 708. INJURING FRUIT TREES, &C.] Every person who shall, maliciously or mischievously bruise, break or pull up, cut down, carry away, destroy, or in any wise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing or standing on the land of another, shall be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 709. REMOVING OR ALTERING LANDMARKS.] Every person who either:

1. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Maliciously defaces or alters the marks upon any tree, post, or other monument, made for the purpose of designating any point, course or line in any such boundary; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks,

Is guilty of a misdemeanor.

§ 710. INTERFERING WITH PIERS AND DAMS.] Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this territory, or hoists any gate in or about said dams, is guilty of a misdemeanor.

§ 711. DESTROYING DAM.] Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

§ 712. REMOVING OR INJURING PILES.] Every person who maliciously draws up or removes, or cuts or otherwise injures, any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is punishable by imprisonment in the territorial prison not exceeding five years and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 713. REMOVING BUOY.] Every person who willfully removes any buoy placed in the Missouri river by any lawful authority, is guilty of a misdemeanor.

§ 714. MASKING OR REMOVING SIGNAL LIGHT.] Every person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

§ 715. INJURING WRITTEN INSTRUMENTS.] Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

§ 716. SAME OF ELECTION RETURNS.] Every messenger appointed by authority of law to receive and carry any report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law, and every person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act such as is above specified, is punishable by imprisonment in the territorial prisou not exceeding five years, and not less than two years.

§ 717. SEALED LETTERS.] Every person who willfully opens or reads, or causes to be read any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who without like authority publishes any letter, knowing it to have been opened in violation of this section or any part thereof, is guilty of a misdemeanor.

§ 718. DISCLOSING TELEGRAPH DISPATCHES.] Every person who discloses the contents of any telegraphic dispatch, or any part thereof, addressed to another person, without the permission of such person, to his loss, injury or disgrace, is guilty of a misdemeanor.

§ 719. SECRETING SAME.] Every person having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor.

§ 720. INJURING WORKS OF ART OR IMPROVEMENT.] Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument, work of art, or useful or ornamental improvement, within the limits of any village, town or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a misdemeanor.

§ 721. DESTROYING WORKS OF LITERATURE OR ART.] Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is punishable by imprisonment in the territorial prison for not exceeding three years, or in a county jail not exceeding one year.

§ 722. BREAKING GAS OR WATER PIPES.] Every person who willfully breaks, digs up or obstructs, any pipe or main for conducting gas or water, any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.

CHAPTER LVII.

OF MISCELLANEOUS CRIMES.

§ 723. ILLEGALLY GRANTING LICENSE.] Every officer or other person whose duty it is made by law, to grant license to sell intoxicating liquors, or any one who grants any such license contrary to the provisions of the political code, shall be deemed guilty of a misdemeanor.

§ 724. LIQUOR TO INDIAN.] Every person who shall give, barter, sell, or in any manner dispose of any intoxicating liquor to any Indian, shall be guilty of a misdemeanor.

§ 725. PUBLIC INTOXICATION.] Every person being found intoxicated in any public place, is punishable, upon conviction before a justice of the peace, by a fine of ten dollars.

§ 726. SELLING LIQUORS TO MINORS, ETC.] Every person found guilty of selling any intoxicating liquors, by agent or otherwise, to minors, unless upon the written order of their parents, guardians or family phsicians, or to persons intoxicated, or who are in the habit of getting intoxicated, is punishable by a fine not exceeding one hundred and fifty dollars, and not less than twenty dollars for each offense.

§ 727. SELLING LIQUOR TO PAUPERS.] Every person who sells or gives to any person, knowing him to be a pauper, or inmate of any poor house, or alms house, any strong or spirituous liquor, or wine, without authority from the superintendent or physician of such poor house or alms house, is punishable by a fine of twenty-five dollars.

§ 728. SELLING LIQUOR UPON SUNDAY.] Every innkeeper, or person licensed to sell liquors, who sells or gives away any strong or spirituous liquor, or wine upon Sunday, is guilty of a misdemeanor.

§ 729. SAME ON BOAT.] Every master or other person engaged in navigating any steamboat, who allows any liquors mentioned in the last section, to be sold on his boat, on Sunday, while stopping at any wharf, landing, city or town in this territory, is guilty of a misdemeanor.

§ 730. DISTRICT ATTORNEYS AND THEIR PARTNERS.] Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly, connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he forfeits his license to practice.

§ 731. PROSECUTORS ADVISING DEFENSE.] Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he forfeits his license to practice.

§ 732. ATTORNEYS MAY DEFEND THEMSELVES.] The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 733. INTIMIDATING LABORERS.] Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand, before it is finished, is guilty of a misdemeanor.

§ 734. INTIMIDATING EMPLOYERS.] Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor.

§ 735. CONSPIRACY AND MOBS AGAINST MINES.] In all cases where two or more persons shall associate themselves together for the purpose of obtaining possession of any lode, gulch, or placer claim, then in the actual possession of another, by force and violence, or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim or quartz mill or other mining property, or not being upon such property but within hearing of the same, shall make any threats, or make use of any language, sign or gesture, calculated to intimidate any person or persons at work on said property, from continuing to work thereon, or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending, shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months and not less than thirty days, and by fine not exceeding two hundred and fifty dollars, such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property, as aforesaid, or to intimidate laborers, as above set forth, accompanied or followed by any of the acts above specified, by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same.

§ 736. TAKING SAW LOGS.] Any person who shall willfully and without authority, take any saw logs that may be on any river or on the land adjoining or near, a river, which may have floated down said river, or on to said land, and shall remove or attempt to remove the same or who shall cut or split said logs, or otherwise destroy or injure them, shall be deemed guilty of a misdemeanor, and upon conviction, where the value of the logs exceed one hundred dollars, be punished by imprisonment in the county jail not more than one year, nor less than three months, and by fine not to exceed one hundred and not less than ten dollars, and where the value of the logs is one hundred dollars or less, the punishment shall be by fine not exceeding eighty, and not less than twenty dollars.

§ 737. RECEIVING SAME.] Any person who shall purchase, receive or secrete saw logs, so taken or removed, or who shall cut or otherwise injure logs so taken or removed, knowing them to have been so taken or removed, shall be punished as prescribed in the preceding section.

§ 738. CONCEALING ESTRAY—LOST GOODS.] Any person who shall attempt to conceal any estray, or any lost goods, found or taken up by him, or shall efface any marks or brands thereon, or carry the same beyond the limits of the territory, or knowingly permit the same to be done, or shall willfully fail to cause the same to be advertised, sold, or otherwise dealt with as provided by the statute on estray and lost goods, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one hundred dollars, nor less than ten dollars, one half to be paid to the informer, and the other half into the county treasury.

§ 739. WOMAN OR CHILD—HOURS OF LABOR.] Every owner, stockholder, overseer, employer, clerk or foreman, of any manufactory, workshop or other place used for mechanical or manufacturing purposes, who having control, shall compel any woman or any child under eighteen years of age, or permit any child under fourteen years of age, to labor in any day exceeding ten hours, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not exceeding one hundred, and not less than ten dollars.

§ 740. HARBORING INDIANS.] Every person who shall harbor or keep on or about his premises or place of abode, within any organized county in this territory, any Indian or Indians, who have not adopted the manners and habits of civilized life, or who induces or encourages any such Indian or Indians, to camp, remain or hunt for any time or for any purpose within any village or settlement of white people, or in the vicinity of such village or settlement within any organized county in this territory, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not less than twenty-five dollars for each Indian, so kept harbored or induced to remain, and shall stand committed until such fine and costs are paid: *Provided*, The aggregate of such fine, upon each conviction, shall not exceed one hundred dollars.

§ 741. VOTING UNLAWFULLY AT TOWN MEETING.] Every person who votes at any annual township meeting, in a township in which he does not reside, or who offers to vote at any annual township meeting after having voted at an annual township meeting held in another township within the same year, is guilty of a misdemeanor.

§ 742. INJURIOUS ACTS NOT EXPRESSLY FORBIDDEN.] Every person who willfully and wrongfully commits any act which grossly injures the person or property of another or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor.

CHAPTER LVIII.

GENERAL PROVISIONS.

§ 743. ACTS PUNISHABLE IN DIFFERENT WAYS.] An act or omission which is made punishable in different ways by different provisions of this code or other penal statute, may be punished under either of such provisions, except that in the cases specified in sections 754 to 757, inclusive, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one; and an acquittal or conviction and sentence under either one, bars a prosecution for the same act or omission under any other.

§ 744. ACTS PUNISHABLE UNDER FOREIGN LAW.] An act or omission declared punishable by this code, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this code.

§ 745. FOREIGN CONVICTION OR ACQUITTAL.] But whenever it appears upon the trial of an indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

§ 746. CONTEMPTS PUNISHABLE AS CRIMES.] A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt.

§ 747. MITIGATION OF PUNISHMENT.] But where it is made to appear at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

§ 748. AIDING IN MISDEMEANOR.] Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act, is guilty of a misdemeanor.

§ 749. SENDING LETTER, WHEN COMPLETE.] In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any post office or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

§ 750. OMISSION TO PERFORM DUTY.] No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

§ 751. ATTEMPTS TO COMMIT CRIMES.] No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

§ 752. FAILURES PUNISHABLE.] Every person who attempts to commit any crime, and in such attempt does any act towards the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

1. If the offense so attempted be punishable by imprisonment in the territorial prison for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in

the territorial prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

2. If the offense so attempted be punishable by imprisonment in the territorial prison for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

3. If the offense so attempted be punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted be punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment, and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

§ 753. RESTRICTION.] The last two sections do not protect a person who in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 754. SECOND OFFENSES.] Every person who, having been convicted of any offense punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction an offender would be punishable by imprisonment in the territorial prison for any term exceeding five years, such person is punishable by imprisonment in the territorial prison for a term not less than ten years.

2. If such subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for a term not exceeding ten years.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if commited, would be punishable by imprisonment in the territorial prison, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for a term not exceeding five years.

§ 755. ATTEMPTS TO CONCEAL DEATH OF CHILD.] Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two.

§ 756. SECOND OFFENSES—HOW PUNISHED.] Every person who, having been convicted of petit larceny, or of any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable as follows:

1. If such subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If such subsequent offense is such that upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed upon a conviction for such first offense.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison. then such person is punishable by imprisonment in such prison for a term not exceeding five years.

§ 757. FOREIGN CONVICTION.] Every person who has been convicted in any other state, government or country of an offense which, if committed within this territory, would be punishable by the laws of this territory by imprisonment in the territorial prison, is punishable for any subsequent crime committed within this territory, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this territory.

§ 758. TWO OR MORE TERMS OF IMPRISONMENT] When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

§ 759. IMPRISONMENT FOR LIFE.] Whenever any person is declared punishable for a crime by imprisonment in the territorial prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years, not less than such as are prescribed. But no person can in any case be sentenced to imprisonment in the territorial prison for any term less than one year.

§ 760. SENTENCE—HOW TO BE LIMITED.] In cases where convicts sentenced to be imprisoned in the territorial prison for a longer period than one year, it is the duty of the court before which the conviction is had to limit the time of the sentence, so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

§ 761. JUVENILE OFFENDERS.] Whenever any person under the age of sixteen years is convicted of an offense punishable by imprisonment in the territorial prison, the court before whom such conviction was had, may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county in which such conviction was had.

§ 762. FINE MAY BE ADDED TO IMPRISONMENT.] Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed.

§ 763. CIVIL RIGHTS SUSPENDED.] A sentence of imprisonment in the territorial prison for any term less than for life, suspends all the civil rights of the person so sentenced, and forfeits all public offices, and all private trusts, authority or power, during the term of such imprisonment.

§ 764. CIVIL DEATH.] A person sentenced to imprisonment in the territorial prison for life, is thereafter deemed civilly dead.

§ 765. PERSON OF CONVICT PROTECTED.] The person of a convict sentenced to imprisonment in the territorial prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

§ 766. FORFEITURES.] No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry for treason, and other cases in which a forfeiture is expressly imposed by law.

§ 767. WITNESSES TESTIMONY—PERJURY.] The various sections of this code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

§ 768. CERTAIN TERMS DEFINED.] Wherever the terms mentioned in the following sections are employed in this code, they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears.

§ 769. WILLFULLY DEFINED.] The term "willfully," when applied to the intent which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

§ 770. NEGLECT, NEGLIGENCE, ETC.] The terms "neglect," "negligence," "negligent," and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

§ 771. CORRUPTLY DEFINED.] The term "corruptly," when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

§ 772. MALICE AND MALICIOUSLY DEFINED.] The terms "malice" and "maliciously," when so employed, import a wish to vex, annoy or injure another person, established either by proof or presumption of law.

§ 773. KNOWINGLY DEFINED.] The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

§ 774. BRIBE DEFINED.] The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

§ 775. VESSEL DEFINED.] The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

§ 776. PEACE OFFICER DEFINED.] The term "peace officer" signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

§ 777. MAGISTRATE DEFINED.] The term "magistrate" signifies any justice of the peace, judge of probate court, mayor of an incorporated city or town, and such other officer or officers whose duty it is made by law to examine and punish violations of the public peace.

§ 778. SIGNATURE DEFINED.] The term "signature" includes any name, mark or sign, written with intent to authenticate any instrument or writing.

§ 779. WRITING.] The term "writing" includes printing.

§ 780. REAL PROPERTY DEFINED.] The term "real property" includes every estate, interest and right in lands, tenements and hereditaments.

§ 781. PERSONAL PROPERTY.] The term "personal property" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished.

§ 782. PROPERTY DEFINED.] The term "property" includes both real and personal property.

§ 783. PERSON DEFINED.] The word "person" includes corporations, as well as natural persons.

§ 784. SAME.] Where the term "person" is used in this code to designate the party whose property may be the subject of any offense, it includes this territory, any other state, government or country which may lawfully own any property within this territory, and all public and private corporations, or joint associations, as well as individuals.

§ 785. SINGULAR INCLUDES PLURAL.] The singular number includes the plural, and the plural the singular.

§ 786. GENDER.] Words used in the masculine gender, comprehend as well the feminine and neuter.

§ 787. PRESENT TENSE.] Words used in the present tense include the future, but exclude the past.

§ 788. INTENT TO DEFRAUD.] Whenever, by any of the provisions of this code an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate whatever.

§ 789. Civil remedies.] The omission to specify or affirm in this code, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 790. Proceeding to impeach or remove.] The omission to specify or affirm in this code any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

§ 791. Military punishments.] This code does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants.

§ 792. Fines, &c. to county general fund.] All fines, forfeitures and pecuniary penalties, prescribed as a punishment, by any of the provisions of this code, when collected, shall, when not otherwise specially provided, be paid into the treasury of the proper county, to be added to the county general fund.

§ 793. Costs to be taxed.] In all cases of conviction, the costs of the prosecution shall be taxed against the defendant, and enforced as other judgments in criminal causes.

Approved, February 7, 1877.

CHAPTER LIX.

AN ACT to Protect the Citizens of Dakota Territory, and Elevate the Standing of the Medical Profession.
[Chapter 14, Laws of 1868-9.]

§ 1. Who may practice medicine.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* It shall be unlawful for any person within the limits of said Territory, who has not attended two full courses of instruction, and graduated at some school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some state or county medical society, and is not a person of good moral character, to practice medicine in any of its departments for reward or compensation, or attempt to practice medicine, or prescribe medicine or medicines, for reward or compensation, for any sick person within the said Territory of Dakota; *Provided,* That in all cases when any person has been continuously engaged in the practice of medicine for a period of ten years or more, he shall be considered to have complied with the provisions of this act.

§ 2. PUNISHMENT PRESCRIBED.] Any person living in the territory of Dakota, or any person coming into said territory, who shall practice medicine, or attempt to practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said territory, in violation of section 1 of this act, shall, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars for such offense; and upon conviction for a second violation of this act, shall, in addition to the above fine, be imprisoned in a jail within said territory for a term not less than thirty days, and in no case wherein this act shall have been violated, shall any person so violating receive a compensation for services rendered; *Provided*, That nothing herein contained shall in any way be construed to apply to any person practicing dentistry.

§ 3. EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, January 15, 1869.

CHAPTER LX.

AN ACT to Regulate the time for Burning Prairies

§ 1. PRAIRIE FIRES FORBIDDEN.] *Be it enacted by the Legislative Assembly of the Territory of Dakota*, That if any person or persons shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands in the months of September, October, November, December, January, February, March, April, May or June, except as hereinafter provided, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined a sum not more than one thousand dollars nor less than ten dollars, and imprisonment in the county jail a period not longer than six months, one or both, at the discretion of the court, and shall also be liable in a civil action to any person or persons damaged by such fire to the amount of such damages.

§ 2. FIRES PERMITTED—WHEN.] That for the purposes of destroying any grass or stubble that may be on any piece of land at the time any person or persons commence to break or plow the same, it shall be lawful for such person or persons to set the same on fire at any time in the year: *Provided*, That at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least fifty feet in width, completely encompassing the place where such fire is set.

§ 3. ACCIDENTAL DAMAGES.] That if any fire set as provided in section 2 of this act should by accident and without any fault or neglect of the person or persons setting the same get beyond his or their control, such person or persons shall be liable, as provided in section 1 of this act, for all damages done by said fire, but not otherwise. But if such fire should by negligence, carelessness, or be intentionally permitted to spread beyond the bounds of such strip of land mentioned in section 2, then the person or persons setting such fire shall be liable both civilly and criminally, as provided in section 1 of this act.

§ 4. GRASSHOPPER DESTRUCTION.] That it shall be lawful for any person or persons at any time between the 20th day of April and the 20th day of June, to set on fire, for the destruction of grasshoppers, any marshes, prairies, grass or stubble lands owned or occupied by him, her or themselves, or any marshes, prairies, grass or stubble lands adjacent thereto: *Provided*, That the person or persons desiring to set such fire shall give at least twenty-four hours notice to all persons residing within one and a half miles of the place where the fire is to be set, and shall state, at the time of giving said notice, the time when and the place where such fire will be set. Such person or persons shall take all necessary precaution before the setting of such fire, to prevent damage by the same.

§ 5. FIRE LIMITED.] That fire set under provisions of section four of this act, shall not be allowed to spread beyond the control of the person or persons setting the same, and shall be subdued and extinguished the same day on which it is set.

§ 6. PENALTY.] Any person or persons violating the provisions of section five, shall be liable in a civil action, to any person or persons damaged by such fire, to the amount of such damage, and in case any person or persons shall negligently, carelessly, willfully, maliciously or intentionally violate any of the provisions of section 5, such person or persons shall be liable, both civilly and criminally, the same as though they had violated the provisions of section 1, of this act.

§ 7. EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, February 17, 1877.

CODE OF CRIMINAL PROCEDURE.

AN ACT to Establish a Code of Criminal Procedure for Dakota Territory.

PRELIMINARY PROVISIONS.

§ 1. TITLE OF CODE.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* This act shall be known as the Code of Criminal Procedure of the Territory of Dakota.

§ 2. CRIME DEFINED—PUNISHMENTS.] A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office.
5. Disqualification to hold and enjoy any office of honor, trust, or profit under this territory.

§ 3. DIVISION OF CRIMES.] Crimes or public offenses are divided into:

1. Felonies.
2. Misdemeanors.

§ 4. FELONY DEFINED.] A felony is a crime which is, or may be, punishable with death, or by imprisonment in the territorial prison.

§ 5. MISDEMEANOR.] Every other crime is a misdemeanor.

§ 6. PUNISHMENT ONLY ON CONVICTION.] No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof.

§ 7. INDICTMENT NECESSARY, EXCEPT.] Every public offense must be prosecuted by indictment, except:

1. Where proceedings are had for the removal of civil officers of the territory.
2. Offenses arising in the militia, when in actual service, and in the land and naval forces in time of war, or which this territory may keep, with the consent of congress, in time of peace.

3. Offenses tried in justice's and police courts in cases concerning which lawful jurisdiction, without the intervention of a grand jury is, or may be, conferred upon said courts.

§ 8. CRIMINAL ACTION DEFINED.] The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

§ 9. HOW PROSECUTED.] A criminal action is prosecuted in the name of the territory of Dakota as a party, against the person charged with the offense.

§ 10. PARTY DEFENDANT.] The party prosecuted in a criminal action is designated in this code as the defendant.

§ 11. RIGHTS OF DEFENDANT.] In a criminal action the defendant is entitled:

1. To a speedy and public trial.
2. To be allowed counsel, as in civil actions, or to appear and defend in person and with counsel; and
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

§ 12. BUT ONE PROSECUTION, EXCEPT.] No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted, except as hereinafter provided for new trials.

§ 13. WITNESS AGAINST SELF—RESTRAINT.] No person can be compelled in a criminal action, to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

§ 14. HOW CONVICTION CAN BE HAD.] No person can be convicted of a public offense, unless by the verdict of a jury accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment, in the case mentioned in section 269, or upon a judgment of a police or justices' court in cases in which such judgment may be lawfully given without the intervention of a jury and grand jury.

TITLE I.

OF THE COURTS HAVING JURISDICTION IN CRIMINAL ACTIONS.

§ 15. JURISDICTION OF DISTRICT COURT.] There is in each of the three districts of this territory a court denominated the district court, with jurisdiction conferred by the organic act of this territory and other laws of congress, and having, among other things, common law jurisdiction, and authority for the redress of all wrongs committed against the laws of this territory, affecting persons or property.

§ 16. DISTRICT COURT, WHERE HELD.] Each of the said district courts may be held, for the trial of criminal actions, in any county or subdivision in the same district, as is, or may be, provided by law.

§ 17. JURISDICTION OF DISTRICT COURT.] The district court has jurisdiction:

1. To inquire by the intervention of a grand jury of all public offenses committed or triable in the county or subdivision for which the court may be held.

2. To inquire into the cause of the detention of all persons imprisoned in the jail of the county or subdivision, or otherwise detained, and to make an order for their recommitment or discharge, or otherwise according to law.

3. To hear, try and determine all criminal actions according to law, and to exercise all powers, whether original or appellate, conferred upon it by this code, or by the other laws of this territory.

§ 18. FINAL DECISIONS—HOW REVIEWABLE.] The final decisions of the district courts are reviewable and determinable by the supreme court, according to law, on writs of error allowable by the supreme court, and bringing up for review the record and bills of exceptions.

§ 19. JURISDICTION OF JUSTICES OF THE PEACE.] Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

One—As committing magistrates, under the provisions of this code, and sections 3 and 104 of the justices' code; and

Two—To exercise such lawful jurisdiction, to try and determine petit misdemeanors, not indictable, as by the organic law and said justices code, or other laws, is now, or may hereafter be conferred upon them.

TITLE II.

OF THE PREVENTION OF PUBLIC OFFENSES.

CHAPTER I. Of lawful resistance.
II. Of the intervention of officers of justice.
III. Security to keep the peace.
IV. Police in cities and villages, and their attendance at exposed places.
V. Suppression of riots.

CHAPTER I.

OF LAWFUL RESISTANCE.

§ 20. TO COMMISSION OF OFFENSE—BY WHOM.] Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.
2. By other parties.

§ 21. BY PARTY TO BE INJURED.] Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person or his family, or some member thereof.
2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

§ 22. BY OTHERS.] Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

§ 23. PUBLIC OFFENSES PREVENTED.] Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.
2. By forming a police in cities and villages, and by requiring their attendance in exposed places.
3. By suppressing riots.

§ 24. PERSONS ASSISTING OFFICERS JUSTIFIED.] When the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

§ 25. INFORMATIONS BEFORE WHOM.] An information verified by the oath of the complainant, may be laid before any of the magistrates mentioned in section 94, that a person has threatened to commit an offense against the person or property of another.

§ 26. MAGISTRATE MUST ISSUE WARRANT.] If it appear from the information that there is just reason to fear the commission of the offense threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate of the county.

§ 27. PROCEEDINGS IF CHARGE CONTROVERTED.] When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must, on demand of the defendant, be reduced to writing, and subscribed by the witnesses.

§ 28. PERSON TO BE DISCHARGED.] If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

§ 29. WHEN PERSON MUST GIVE BOND.] If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this territory, and particularly towards the complainant.

§ 30. WHERE BOND IS OR IS NOT GIVEN.] If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

§ 31. PERSON MAY BE DISCHARGED.] If the person complained of be committed for not giving security, he may be discharged by any justice of the peace of the county, or police or special justice of the city, upon giving the same.

§ 32. MAGISTRATE TO TRANSMIT UNDERTAKING.] The undertaking must be transmitted by the magistrate to the next district court of the county.

§ 33. ASSAULT IN PRESENCE OF MAGISTRATE.] A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as provided in section 29, or if he refuse to do so, he may be committed as provided in section 30.

§ 34. PERSON MUST APPEAR AT DISTRICT COURT.] A person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted unless his default be excused.

§ 35. WHEN PERSON MAY BE DISCHARGED.] If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

§ 36. PROCEEDINGS WHEN PARTIES APPEAR.] If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one for a time not exceeding one year.

§ 37. WHEN UNDERTAKING TO KEEP THE PEACE IS BROKEN.] An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court, as provided in section 34, or upon his being convicted of a breach of the peace.

§ 38. UNDERTAKING PROSECUTED.] Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of this territory.

§ 39. WHAT ALLEGED IN THE ACTION.] In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

§ 40. LIMITATION.] Security to keep the peace or to be of good behavior cannot be required, except as prescribed in this chapter.

CHAPTER IV.

POLICE IN CITIES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

§ 41. ORGANIZATION OF POLICE.] The organization and regulation of the police in the cities and villages of this territory are governed by special statutes.

§ 42. FORCE TO ATTEND PUBLIC MEETINGS.] The mayor or other officer having the direction of the police in a city or village, must order a force sufficient to preserve the peace to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

CHAPTER V.

SUPPRESSION OF RIOTS.

§ 43. OFFICER MAY COMMAND ASSISTANCE.] When a sheriff or other public officer, authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

§ 44. OFFICER MUST REPORT RESISTERS.] The officer must certify to the court from which the process is issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

§ 45. REFUSAL A MISDEMEANOR.] Every person commanded by a public officer to assist him in the execution of process, as provided in section 43, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

§ 46. GOVERNOR ORDER ADDITIONAL FORCE.] If it appears to the governor that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, or to suppress riots and to preserve the peace, he must, on the application of the sheriff, or the judge, order such a force from any other county or counties, as is necessary, and all persons so ordered or summoned by the governor or acting governor, are required to attend and act; and any such persons who without lawful cause refuse or neglect to obey the command, are guilty of a misdemeanor.

§ 47. GOVERNOR MAY CALL ON THE MILITARY.] Under the facts and circumstances mentioned in the last section, and when the civil power of the county is not deemed sufficient, it shall be the duty of the governor to apply to the military authorities of the United States for a force sufficient to execute the laws and to prevent resistance thereto, to suppress riots, execute process and preserve the peace.

§ 48. UNLAWFUL ASSEMBLAGE.] Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county or any sheriff of the subdivision, and his deputies, the officials governing the city or town, or the justices of the peace and marshals and constables and police thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the territory, immediately to disperse.

§ 49. PROCEEDINGS IF DO NOT DISPERSE.] If the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

§ 50. WHO DEEMED RIOTERS.] If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

§ 51. OFFICER GUILTY OF MISDEMEANOR.] If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 48, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

§ 52. WHEN OFFICERS MAY DISPERSE SAME.] If the persons assembled and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section 48, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

§ 53. PRECAUTIONS BEFORE ENDANGERING LIFE.] Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse before an attack is made upon them by which their lives may be endangered.

§ 54. PENALTY FOR RESISTING.] A person who, after the publication of a proclamation by the governor or acting governor, or who after lawful notice as aforesaid to disperse and retire, resists or aids in resisting the execution of process in a county declared to be in a state of riot or insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor or any civil officer as aforesaid, to quell or suppress an insurrection or riot, is guilty of a felony, and is punishable by imprisonment in the territorial prison for not less than two years.

TITLE III.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

CHAPTER I.

OF THE REMOVAL OF CIVIL OFFICERS.

§ 55. PROCEEDINGS.] In addition to the proceedings mentioned in chapter XXVI of the code of civil procedure and chapter XXII of the political code, and apart and distinct from any other criminal action or proceedings, the following provisions are adopted to obtain a judgment of removal from office.

§ 56. ACCUSATION, HOW PRESENTED.] An accusation in writing against any county, township, city or municipal officer, for willful or corrupt misconduct in office may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed.

§ 57. REQUISITES OF ACCUSATION.] The accusation must state the offense charged, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

§ 58. DUTY OF JUDGE AND ATTORNEY.] After receiving the accusation the judge to whom it is delivered must forthwith cause it to be transmitted to the district attorney of the county or subdivision, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require by written notice of not less than five days that he appear before the district court of the county or subdivision, and answer the accusation at a specified time. The original accusation must then be filed with the clerk of the court.

§ 59. DEFENDANT TO APPEAR.] The defendant must appear at the time appointed in the notice, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

§ 60. DEFENDANT'S ANSWER.] The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

§ 61. HOW OBJECTION MADE.] If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the ground of the objection.

§ 62. DENIAL.] If he deny the truth of the accusation the denial may be oral and without oath, and must be entered upon the minutes.

§ 63. ANSWER.] If an objection to the sufficiency of the accusation be not sustained, the defendant must answer the accusation forthwith.

§ 64. JUDGMENT OR TRIAL.] If the defendant plead guilty, or refuse to answer the accusation, the court must render judgment of conviction against him. If he deny the matters charged, the court must proceed to try the accusation.

§ 65. METHOD OF TRIAL.] The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

§ 66. JUDGMENT IF CONVICTED.] Upon a conviction, the court must pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

§ 67. REMOVAL OF TERRITORIAL OFFICERS.] The same proceedings may be had on like grounds for the removal of any territorial officer elected by the people of the territory, or appointed by the governor thereof, except delegate to congress and members of the legislative assembly.

§ 68. WHAT JURY TO PRESENT.] In such proceedings the accusation may be presented by the grand jury of the county or subdivision in which such territorial officer resides, or in which he has his place of office for the usual transaction of his official business.

§ 69. REMOVAL OF DISTRICT ATTORNEY.] The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must de delivered by the judge to the clerk, and by him to such person as may be appointed by the judge to act as prosecuting officer in the matter, who is authorized and required to conduct the proceedings.

§ 70. OTHER PROCEEDINGS AND PENALTIES.] The same proceedings may be had against any officer within the jurisdiction of the court who is accused of charging and collecting illegal fees for services rendered or to be rendered in his office, or who has refused or neglected to perform the official duties pertaining to his office, or who has rendered himself incompetent to perform his said duties by reason of habitual drunkenness, and upon a conviction thereof the court may pronounce judgment that the defendant be removed from office, or that he pay a fine not exceeding five hundred dollars in favor of the informer, with costs of suit; or the court may in its discretion pronounce judgment, both for his removal from office and for the payment of the fine and costs.

TITLE IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT INCLUSIVE.

CHAPTER I. Of the local jurisdiction of public offenses.
II. Of the time of commencing criminal actions.

III. Of the information.
IV. The warrant of arrest.
V. Arrest, by whom and how made.
VI. Retaking after an escape or rescue.
VII. Examination of the case and discharge of the defendant, or holding him to answer.

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

§ 71. WHO PUNISHABLE.] Every person is liable to punishment for a public offense, as is prescribed by section 15, of the penal code, except it is by law cognizable exclusively in the courts of the United States.

§ 72. OFFENSES CONSUMMATED WITHIN TERRITORY.] When the commission of a public offense, commenced without this territory, is consummated within its boundaries, the defendant is liable to punishment therefor in this territory, though he were out of the territory at the time of the commisssion of the offense charged, if he consummated it in this territory through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offense is consummated.

§ 73. JURISDICTION IN CASE OF DUEL.] When an inhabitant or resident of this territory, by previous appointment or engagment, fights a duel, or is concerned as second therein, out of the jurisdiction of this territory, and in the duel a wound is inflicted upon a person, whereof he dies in this territory, the jurisdiction of the offense is in the county where the death happened.

§ 74. WHEN PERSON LEAVES TO EVADE LAW.] When an inhabitant of this territory shall have left the same for the purpose of evading the operation of the provisions of the statutes relating to duelling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed, or in any county in which in the opinion of the governor the evidence can be most conveniently obtained and produced, to be designated by him by a written appointment, filed in the office of the clerk of the court of that county.

§ 75. OFFENSE COMMITTED IN TWO COUNTIES.] When a public offense is committed, partly in one county and partly in another county, or the acts or effects thereof, constituting or requisite to the offense, occur in two or more counties, the jurisdiction is in either county.

§ 76. COMMITTED NEAR BOUNDARY.] When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

§ 77. ON BOARD VESSEL.] When an offense is committed in this territory, on board a vessel navigating a river, lake or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates.

§ 78. JURISDICTION IN CERTAIN CASES.] The jurisdiction of an indictment:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent, against his will, to cause him to be secretly confined or imprisoned in this territory, or to be sent out of the territory, or from one county to another; or,

2. For decoying, or taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-one years, for the purpose of prostitution; or,

4. For taking away any female under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution,

Is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed, may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, aiding, or in being an accessory to the commission of the offense, or in abetting the parties concerned therein.

§ 79. BIGAMY OR INCEST.] When the offense either of bigamy or of incest, is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

§ 80. PROCEEDINGS IN CERTAIN CASES.] When property taken in one county, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if, before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter must, upon demand, deliver him to the sheriff of the former county, upon being served with a certified copy of the indictment, and upon a receipt indorsed thereon by the sheriff of the former county, of the delivery of the body of the defendant; and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant.

§ 81. JURISDICTION OF ACCESSORY.] In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

§ 82. CONVICTION OR ACQUITTAL A BAR.] When an act charged as a public offense is within the jurisdiction of another territory, county or state, as well as this territory, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this territory.

§ 83. SAME OF TWO COUNTIES.] When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

§ 84. INDICTMENT FOR ESCAPE.] The jurisdiction of an indictment for escaping from prison is in any county of the territory.

§ 85. STOLEN PROPERTY.] The jurisdiction of an indictment for stealing in any state or country, or other territory, the property of another, or reciving it, knowing it to have been stolen, and bringing the same into this territory, is in any county into or through which such stolen property has been brought.

§ 86. FOR MURDER OR MANSLAUGHTER.] The jurisdiction of an indictment for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county, or out of the territory, is in the county where the injury was inflicted.

§ 87. AGAINST A PRINCIPAL NOT PRESENT.] The jurisdiction of an indictment against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this code if he were so present and aiding and abetting therein.

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

§ 88. FOR MURDER UNLIMITED.] There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

§ 89. LIMIT IN OTHER CASES.] In all other cases, an indictment for a public offense must be found within three years after its commission.

§ 90. DEFENDANT'S ABSENCE.] If when the offense is committed the defendant be out of the territory the indictment may be found within the term herein limited after his coming within the territory, and no time during which the defendant is not an inhabitant of or usually resident within the territory, is part of the limitation.

§ 91. WHEN INDICTMENT IS FOUND.] An indictment is found within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

CHAPTER III.

OF THE INFORMATION.

§ 92. INFORMATION DEFINED.] The information is the allegation in writing made to a magistrate that a person has been guilty of some designated public offense.

§ 93. MAGISTRATE DEFINED.] A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

§ 94. WHO ARE MAGISTRATES.] The following persons are magistrates:

1. The judges of the supreme court.
2. The district judges.
3. Justices of the peace.

4. Police and other special justices, appointed or elected in a city, village or town.

CHAPTER IV.

THE WARRANT OF ARREST.

§ 95. MAGISTRATE MUST ISSUE.] When an information verified by oath or affirmation is laid before a magistrate of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

§ 96. WARRANT—FORM OF.] A warrant of arrest is an order in writing in the name of the territory, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of ....

The territory of Dakota. To any sheriff, constable, marshal or policeman in this territory (or in the county of ...., or as the case may be.)

Information upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing C D thereof;

You are therefore commanded forthwith to arrest the above named C D, and bring him before me, at (naming the place,) or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ......, this .... day of ......, 18...

E F, Justice of the peace (or as the case may be.)

§ 97. REQUISITES OF WARRANT.] The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant and the time of issuing it, and the county, city, town or village where it is issued, and be signed by the magistrate with his name of office.

§ 98. TO WHOM DIRECTED.] The warrant must be directed to and executed by a peace officer.

§ 99. PEACE OFFICER.] A peace officer is a sheriff of a county or subdivision, or constable, marshal, or policeman of a city, town or village, or township.

§ 100. WARRANT BY JUDGES.] If the warrant be issued by a judge of the supreme court, or a district judge, it may be directed generally to any sheriff, constable, marshal or policeman in the territory, and may be executed by any of those officers to whom it may be delivered.

§ 101. EXECUTION—OTHER COUNTY.] If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the county in which it is issued, and may be executed in that county, or if the defendant be in another county it may be executed therein, upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him with his name of office, and dated at the county, city, town or village where it is made, to the following effect:

This warrant may be executed in the county of .... (as the case may be)

§ 102. PREREQUISITES TO INDORSEMENT.] The indorsement mentioned in the last section cannot, however, be made unless upon the oath of a creditable witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon this proof the magistrate indorsing the warrant is exempted from liability to a civil or criminal action though it afterwards appear that the warrant was illegally or improperly issued.

§ 103. DUTY OF OFFICER IF FELONY.] If the offense charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county as provided in section 107.

§ 104. IF A MISDEMEANOR.] If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

§ 105. PROCEEDINGS IF BAIL TAKEN.] On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

§ 106. WHERE BAIL IS NOT GIVEN.] If, on the admission of the defendant to bail, as provided in section 104, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in the next section.

§ 107. WHEN ISSUING—MAGISTRATE ABSENT.] When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate the warrant, with the return indorsed and subscribed by him.

§ 108. DELAY PROHIBITED.] The defendant must in all cases be taken before the magistrate without unnecessary delay.

§ 109. BEFORE MAGISTRATE DID NOT ISSUE.] If the defendant be taken before a magistrate other than the one who issued the warrant, the information on which the warrant was granted must be sent to that magistrate, or if it cannot be procured, the prosecutor and his witness must be summoned to give their testimony anew.

§ 110. DEFENDANT FROM OTHER COUNTY.] When an information is laid before a magistrate of the commission of a public offense triable in another county of the territory, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest and most accessible magistrate of the county in which the offense is triable, and the information of the informant with the depositions, if any, of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

§ 111. DUTY OF OFFICER.] The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

§ 112. IF OFFENSE A MISDEMEANOR.] If the offense charged in the warrant issued pursuant to section 110, is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, information, depositions, if any, and undertaking, to the clerk of the court in which the defendant is required to appear.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

§ 113. ARREST DEFINED.] Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

§ 114. BY WHOM MADE.] An arrest may be either:

1. By a peace officer, under a warrant.
2. By a peace officer, without a warrant; or,
3. By a private person.

§ 115. AID OF OFFICER.] Every person must aid an officer in the execution of a warrant, if the officer require his aid.

§ 116. FELONY, WHEN MADE—MISDEMEANOR.] If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate indorsed upon the warrant.

§ 117. ARREST HOW MADE.] An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

§ 118. RESTRAINT.] The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

§ 119. OFFICER MUST SHOW WARRANT.] The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required.

§ 120. IF DEFENDANT RESIST.] If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

§ 121. OFFICER MAY BREAK DOOR.] The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

§ 122. SAME TO LIBERATE.] An officer may break open an outer or inner door or window of a dwelling house for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

§ 123. ARREST WITHOUT WARRANT.] A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in his presence,

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

§ 124. MAY BREAK DOOR.] To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

§ 125. WITHOUT WARRANT AT NIGHT.] He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest though it afterwards appear that the felony had not been committed.

§ 126. AUTHORITY STATED.] When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

§ 127. BYSTANDER'S ARREST.] He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

§ 128. OFFENSE IN PRESENCE OF MAGISTRATE.] When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

§ 129. PRIVATE PERSON ARREST.] A private person may arrest another:

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 130. INFORM PERSON OF CAUSE.] He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

§ 131. PRIVATE PERSON MAY BREAK DOOR.] If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest.

§ 132. DUTY IN SUCH CASES.] A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

§ 133. OFFENSIVE WEAPONS TAKEN.] Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

§ 134. PURSUIT AND RE-ARREST.] If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the territory.

§ 135. MAY BREAK DOOR OR WINDOW.] To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

CHAPTER VII.

EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

§ 136. MAGISTRATE'S DUTY.] When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.

§ 137. ALLOW DEFENDANT COUNSEL.] He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the county or city, as the defendant may name. The officer must without delay perform that duty, and shall receive fees therefor as upon service of a subpœna.

§ 138. EXAMINATION.] The magistrate must, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

§ 139. ADJOURNMENT.] The examination must be completed at one session unless the magistrate for good cause adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

§ 140. DISPOSITION OF DEFENDANT ON ADJOURNMENT.] If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody upon sufficient bail or upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is adjourned.

§ 141. COMMITMENT FOR EXAMINATION.] The commitment for examination is by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect:

The within named A. B., having been brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of ...., (or to the marshal of the city of ...., as the case may be) to await examination on the .... day of ...., 18.., at .... oclock, at which time you will have his body before me at my office.

§ 142. DUTY ON EXAMINATION.] At the examination, the magistrate must, in the first place, read to the defendant the information on file before him. He must also after the commencement of the prosecution, issue subpœnas for any witnesses required by the prosecutor or the defendant.

§ 143. RIGHTS OF DEFENDANT.] The witnesses must be examined in the presence of the defendant, and may be cross examined in his behalf. And on demand of the defendant all the testimony in the case must be reduced to writing in the form of depositions.

§ 144. MAY PRODUCE WITNESSES.] When the examination of the witnesses on the part of the territory is closed, any witnesses the defendant may produce must be sworn and examined.

§ 145. MAGISTRATE TO KEEP DEPOSITIONS.] The magistrate or his clerk must keep the depositions taken on the examination, if any have been taken, and the statement of the defendant, if any, until they are returned to the proper court, and must not permit them to be inspected by any person except a judge of a court having jurisdiction of the offense, the district attorney of the county, and the defendant and his counsel.

§ 146. VIOLATION, MISDEMEANOR.] A violation of the provisions of the last section, is punishable as a misdemeanor.

§ 147. DISCHARGE DEFENDANT.] After hearing the proofs and the statement of the defendant, if he have made one, if it appear, either that a public offense has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the information over his signature, to the following effect:

There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged.

§ 148. WHEN HELD TO ANSWER.] If, however, it appear from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner indorse on the information an order signed by him, to the following effect:

It appearing to me that the offense in the within information mentioned, (or any other offense, according to the fact, stating generally the nature thereof,) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same.

§ 149. PROCEEDINGS IF NOT BAILABLE.] If the offense be not bailable, the following words or words to the same effect, must be added to the indorsement:

And that he is hereby committed to (the sheriff of ...., or to the marshal of the city of ....; or as the case may be.)

§ 150. WHEN BAILABLE.] If the offense is bailable, and bail is taken by the magistrate, the following words or words to the same effect must be added to the indorsement mentioned in section 148:

And I have admitted him to bail, to answer, by the undertaking hereto annexed.

§ 151. IF BAIL NOT TAKEN.] If the offense is bailable and the defendant is admitted to bail, but bail have not been taken, the following words or words to the same effect must be added to the indorsement mentioned in section 148.

And that he is admitted to bail in the sum of .... dollars, and be committed to the sheriff of the county of ...., (or the marshal of the city of ...., or as the case may be,) until said bail be given.

§ 152. COMMITMENT.] If the magistrate order the defendant to be committed as provided in sections 149 and 151, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

§ 153. FORM OF COMMITMENT.] The commitment must be to the following effect:

County of ....

The Territory of Dakota. To the sheriff of the county of ...., (or marshal of the city of ...., or as the case may be)

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, with time and place as near as may be,) you are commanded to receive him into your custody, and detain him until he is legally discharged.

Dated at ...., this .... day of ...., 18. .

C. D, Justice of the Peace, (or as the case may be.)

§ 154. WITNESS TO GIVE UNDERTAKING.] On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the territory, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the information and depositions if any, are to be sent, or that he will forfeit such sum as the magistrate may fix and determine.

§ 155. SAME WITH SECURITY.] When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

§ 156. INFANTS AND MARRIED WOMEN.] Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

§ 157. WITNESS COMMITTED.] If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply, or is legally discharged.

§ 158. SUBSEQUENT SECURITY.] When, however, in pursuance of section 154, any material witness on the part of the people has been discharged on his undertaking, without surety, if afterwards on the sworn application of the district attorney or other person on behalf of the territory, made to the magistrate or to any judge, it satisfactorily appears that the presence of such witness or any other person on the part of the people is material, or necessary on the trial in court, such magistrate, or judge, may compel such witness, or any other material witness on the part of the territory, to give an undertaking, with sureties, to appear on the said trial and give his testimony therein; and, for that purpose, the said magistrate or judge, may issue a warrant against any such person, under his hand, with or without seal, directed to a sheriff, marshal or other officer, to arrest such person and bring him before such magistrate or judge.

§ 159. WITNESS MAY BE CONFINED.] And in case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said magistrate or judge, he may issue a warrant of commitment against such person, which shall be delivered to said sheriff, or other officer, whose duty it shall be to convey such person to the jail mentioned in said warrant, and the said person shall remain in confinement until he shall be removed to the grand jury and to the court, for the purpose of giving his testimony, or until he shall have given the undertaking required by said magistrate or judge.

§ 160. WHAT MAGISTRATE MUST RETURN.] When a magistrate has discharged a defendant, or has held him to answer as provided in sections 147 and 148, he must return immediately to the next district court of the county or subdivision, the warrant, if any, the information, the depositions, if any have been taken, of all the witnesses examined before him, the statement of the defendant if he have made one, and all undertakings of bail or for the appearance of witnesses taken by him, together with a certified record of the proceedings as they appear on his docket.

TITLE V.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

CHAPTER I. Preliminary provisions.
II. Formation of the grand jury.
III. Powers and duties of the grand jury.
IV. Presentment and proceedings thereon.

CHAPTER I.

PRELIMINARY PROVISIONS.

§ 161. PUBLIC OFFENSES—HOW PROSECUTED.] All public offenses triable in the district courts must be prosecuted by indictment, except as provided in the next section.

§ 162. REMOVAL FROM OFFICE.] When the proceedings are had for the removal of county, township, city, municipal or territorial officers, they may be commenced by an accusation in writing as provided in chapter I, of title III, of this code.

CHAPTER II.

FORMATION OF THE GRAND JURY.

§ 163. GRAND JURY DEFINED.] A grand jury is a body of men consisting of sixteen jurors, impaneled and sworn to inquire into, and true presentment make of all public offenses against the territory, committed or triable within the county or subdivision for which the court is holden.

§ 164. COMPLETING JURY.] Whenever challenges to individual grand jurors is allowed, the court shall make an order to the sheriff, deputy sheriff, or coroner, to summon without delay, from the body of the county or subdivision, a sufficient number of persons to complete or to form a grand jury.

§ 165. TWELVE JURORS FIND INDICTMENT.] No indictment shall be found, nor shall any presentment or accusation be made without the concurrence of at least twelve grand jurors.

§ 166. WHO MAY CHALLENGE PANEL.] The territory, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual grand juror.

§ 167. CHALLENGE TO PANEL.] A challenge to the panel may be interposed by either party for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county or subdivision.
2. That notice of the drawing of the grand jury was not given.
3. That the drawing was not had in the presence of the officers designated by law, or in the manner prescribed by law.

§ 168. JURY DISCHARGED.] If a challenge to the panel be allowed, the grand jury must be discharged.

§ 169. CHALLENGE OF JUROR.] A challenge to an individual grand juror may be interposed by either party, for one or more of the following causes only:

1. That he is a minor.
2. That he is not a qualified elector.
3. That he is otherwise disqualified under any of the provisions of chapter XIX of the political code.
4. That he is insane.
5. That he is a prosecutor upon a charge against the defendant.
6. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.
7. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging, but no person shall be disqualified as a juror by reason of having formed or ex-

pressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court upon his declaration, under oath, or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him.

§ 170. ORAL OR WRITTEN.] Challenges may be oral or in writing, and must be tried by the court.

§ 171. DUTY OF COURT AND CLERK.] The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

§ 172. EFFECT OF CHALLENGE ALLOWED.] If a challenge to an individual grand juror is allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

§ 173. VIOLATION OF LAST SECTION.] The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

§ 174. CHALLENGE BEFORE OATH.] Neither the territory, nor a person held to answer a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror unless it be by challenge, and before the grand jury is sworn, except that after the grand jury is sworn, and before the indictment is found, the court may in its discretion, upon a good cause shown, receive and allow a challenge.

§ 175. COURT ORDER ANOTHER JURY.] If the grand jury is discharged by an allowance of a challenge to the whole panel, or if an offense is committed during the sitting of the court, after the regular discharge of the grand jury, or if after such discharge a new indictment becomes requisite by reason of an arrest of judgment or by the quashing of an indictment, or if from any other good and sufficient cause another grand jury may become necessary, the court may, in its discretion, order that another grand jury be summoned, and the court may to that end forthwith make an order to the county commissioners for the immediate selection and furnishing to the clerk of a list of jurors, and may make such further orders to the clerk, sheriff and other officers for an immediate compliance with their duties as may be proper to obtain another grand jury at and during the same term of the court.

§ 176. SPECIAL GRAND JURY.] A grand jury formed and impanelled as to and in a particular case, after a challenge or challenges to individual grand jurors have been allowed, shall only be sworn to act in such particular case, and as to all other cases at the same term of the court the grand jury shall be formed in the usual manner provided by law.

§ 177. COURT TO APPOINT FOREMAN.] From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused, before the grand jury are dismissed.

§ 178. OATH OF FOREMAN.] The following oath must be administered to the foreman of the grand jury:

You, as foreman of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against this territory, committed or triable within this county, (or subdivision) of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the territory, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.

§ 179. OATH TO OTHER GRAND JURORS.] The following oath must be immediately thereupon administered to the other grand jurors present:

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.

§ 180. GRAND JURY CHARGED.] The grand jury being impanelled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper as to the nature of their duties, and as to any charges for public offenses returned to the court, or likely to come before the grand jury.

§ 181. JURY MUST RETIRE.] The grand jury must then retire to a private room, and inquire into the offenses cognizable by them.

§ 182. APPOINT CLERK—HIS DUTY.] The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings, except of the votes of the individual members, and of the evidence given before them.

§ 183. JURY DISCHARGED.] On the completion of the business before them, or whenever the court shall be of opinion that the public interests will not be subserved by a further continuance of the session, the grand jury must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

§ 184. GENERAL POWERS AND DUTIES.] The grand jury has power, and it is their duty to inquire into all public offenses committed or triable in the county or subdivision, and to present them to the court, either by presentment or indictment, or accusation in writing.

§ 185. PRESENTMENT DEFINED.] A presentment is an informal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable in the county or subdivision, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

§ 186. INDICTMENT DEFINED.] An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

§ 187. OATH TO WITNESS.] The foreman may administer an oath to any witness appearing before the grand jury.

§ 188. EVIDENCE RECEIVED.] In the investigation of a charge for the purpose of either presentment or indictment, or accusation, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them; or furnished by legal documentary evidence.

§ 189. SAME.] The grand jury can receive none but legal evidence, and the best evidence in degree to the exclusion of hearsay or secondary evidence.

§ 190. EVIDENCE FOR DEFENDANT.] The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that there is other evidence, they may by and with the consent of the district attorney order such evidence to be produced, and for that purpose the district attorney may issue process for the witnesses.

§ 191. INDICTMENT TO BE FOUND.] The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

§ 192. MEMBER GIVE EVIDENCE.] If a member of the grand jury knows, or has reason to believe, that a public offense has been committed, which is triable in the county or subdivision, he must declare the same to his fellow jurors, who must thereupon investigate the same.

§ 193. SUBJECTS OF INQUIRY.] The grand jury must inquire:

1. Into the case of every person imprisoned in the jail of the county or subdivision, on a criminal charge, and not indicted.

2. Into the condition and management of the public prisons in the county or subdivision; and,

3. Into the willful and corrupt misconduct in office of public officers of every description in the county or subdivision.

§ 194. ACCESS TO PRISONS.] They are also entitled to free access at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

§ 195. DISTRICT ATTORNEY PRIVILEGED.] The grand jury may at all reasonable times ask the advice of the court, or of the district attorney. The district attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them, and may interrogate witnesses before them whenever he thinks it necessary; but no other person is permitted to be present during their sessions except the members and a witness actually under examination, and no person whomsoever must be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

§ 196. SECRECY.] Every member of the grand jury must keep secret, whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

§ 197. WHEN JUROR MAY DISCLOSE.] A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

§ 198. JUROR NOT QUESTIONED.] A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

CHAPTER IV.

PRESENTMENT AND PROCEEDINGS THEREON.

§ 199. PRESENTMENT—HOW FOUND.] A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be signed by the foreman.

§ 200. HOW DISPOSED OF.] The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

§ 201. BENCH WARRANT MAY ISSUE.] If the facts stated in the presentment constitute a public offense, triable in the county or subdivision, the court must direct the clerk to issue a bench warrant for the arrest of the defendant.

§ 202. BY CLERK.] The clerk, on the application of the judge or district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties, or into any part of the territory.

§ 203. FORM OF WARRANT.] The bench warrant, upon presentment, must be substantially in the following form:

County of....

The territory of Dakota. To any sheriff, constable, marshal or policeman in this territory.

A presentment having been made on the .... day of ...., eighteen ..., to the district court of the county of .... (or subdivision ....) charging C D with the crime of .... (designating it generally,) you are therefore commanded forthwith to arrest the above named C D, and take him before E F, a magistrate of the county of ....; or in case of his absence or inability to act, before the nearest and most accessible magistrate in .... county.

Given under my hand, with the seal of said court affixed, this .... day of ...., A. D. 18..

By order of the court.

[SEAL.] A F, Clerk.

§ 204. WHERE SERVED.] The bench warrant may be served in any county or part of the territory, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county or part of the territory it need not be indorsed by a magistrate of that county or part of the territory.

§ 205. PROCEEDINGS BY MAGISTRATE.] The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

TITLE VI.

OF THE INDICTMENT.

CHAPTER I. Finding and presentation of the indictment.
II. Rules of pleading and form of the indictment.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

§ 206. FINDING.] An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

207. DISMISSAL.] If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the original information of the certified record of the proceedings before the magistrate transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

§ 208. RESUBMISSION OF CHARGE.] The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction, it cannot be again submitted.

§ 209. NAMES OF WITNESSES.] When an indictment is found, the names of the witnesses examined before the grand jury, must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court.

§ 210. INDICTMENT—HOW PRESENTED.] An indictment when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record.

§ 211. PROCEEDINGS TO ARREST.] When an indictment is found against a defendant who has not been previously arrested, and is not under bail, the same proceedings must be had as are prescribed in sections 239 to 246 inclusive, against a defendant who fails to appear for arraignment.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

§ 212. FORMS OF PLEADING.] All the forms of pleading in criminal actions and rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

§ 213. FIRST PLEADING.] The first pleading on the part of the territory is the indictment.

§ 214. REQUISITES OF INDICTMENT.] The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

§ 215. CERTAIN AND DIRECT.] The indictment must be direct and certain, as it regards:

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

§ 216. FICTITIOUS NAME.] When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

§ 217. CHARGE BUT ONE OFFENSE].] The indictment must charge but one offense, but the same offense may be set forth in different forms or degrees under different counts; and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

§ 218. TIME OFFENSE COMMITTED.] The precise time at which the offense was committed, need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

§ 219. CERTAIN ERRORS NOT MATERIAL.] When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

§ 220. WORDS HOW CONSTRUED.] The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

§ 221. STATUTE NOT STRICTLY PURSUED.] Words used in a statute to define a public offense, need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

§ 222. WHAT IS SUFFICIENT.] The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. That it was found by a grand jury of the county or subdivision in which the court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is to the jury unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county or subdivision, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

§ 223. CERTAIN INFORMALITIES DISREGARDED.] No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

§ 224. NEED NOT BE STATED.] Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

§ 225. PLEADING JUDGMENT.] In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

§ 226. PLEADING PRIVATE STATUTE.] In pleading a private statue, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

§ 227. REQUISITES FOR LIBEL.] An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial.

§ 228. INDICTMENT FOR FORGERY.] When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

§ 229. FOR PERJURY.] In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned, but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

§ 230. LARCENY OR EMBEZZLEMENT.] In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

§ 231. SELLING OBSCENE BOOKS.] An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

§ 232. SEVERAL DEFENDANTS.] Upon an indictment against several defendants, any one or more may be convicted or acquitted.

§ 233. ACCESSORIES AND PRINCIPALS.] The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, and no additional facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

§ 234. ACCESSORY TRIED, ETC.] An accessory to the commission of a felony, may be indicted, tried and punished, though the principal felon be neither indicted nor tried, and though the principal may have been acquitted.

§ 235. COMPOUNDING A FELONY.] A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

TITLE VII.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

CHAPTER I. Of the arraignment of the defendant.
II. Setting aside the indictment.
III. Demurrer.
IV. Plea.

V. Removal of the action before trial.
VI. The mode of trial.
VII. Formation of the trial jury.
VIII. Postponement of the trial.

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

§ 236. DEFENDANT ARRAIGNED.] When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, if triable therein, if not, before the court to which it is removed or transmitted.

§ 237. MUST BE PRESENT IF FELONY.] If the indictment is for a felony the defendant must be personally present, but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

§ 238. SAME—DUTY OF COURT.] When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer must do so accordingly.

§ 239. BENCH WARRANT ISSUED.] If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, when his personal attendance is necessary, the court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 240. SAME.] The clerk, on the application of the district attorney may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

§ 241. FORM OF WARRANT.] The bench warrant, upon the indictment must, if the offense is a felony, be substantially in the following form.

County of....
The territory of Dakota To any sheriff, constable, policeman or marshal in this territory.

An indictment having been found on the .... day of...., A. D. 18.., in the district court in and for the county (or subdivision) of ...., charging C D with the crime of .... (designating it generally,) you are therefore commanded forthwith to arrest the above named C D and bring him before that court (or before the court to which the indictment may have been removed, naming it) to answer said indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of....

Given under my hand, with the seal of said court affixed, this ... day of .. A. D. 18..
By order of the court.
[SEAL.] E F, Clerk.

§ 242. SAME. If the offense is a misdemeanor or a bailable felony, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect:

Or if he requires it that you take him before any magistrate in that county or in the county in which you arrest him, that he may give bail to answer the indictment.

§ 243. COURT FIX AMOUNT OF BAIL.] If the offense charged is bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail; and an endorsement must be made on the bench warrant and signed by the clerk, to the following effect:

The defendant is to be admitted to bail in the sum of .... dollars.

§ 244. OFFENSE NOT BAILABLE.] The defendant when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county or subdivision in which the indictment is found.

§ 245. WARRANT SERVED IN ANY COUNTY.] The bench warrant may be served in any county in the same manner as a warrant of arrest, except, that when served in another county it need not be endorsed by a magistrate of that county.

§ 246. TAKING BAIL.] If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon.

§ 247. DUTY OF COURT ON INDICTMENT.] When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court, to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

§ 248. DEFENDANT PRESENT.] If the defendant is present when the order is made, he must be forthwith committed accordingly. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

§ 249. COUNSEL BEFORE ARRAIGNMENT.] If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel. If he desires, and is unable to employ counsel, the court must assign counsel to defend him.

§ 250. HOW ARRAIGNMENT MADE.] The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and asking him whether he pleads guilty or not guilty to the indictment.

§ 251. TRUE NAME.] When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment.

§ 252. NONE GIVEN.] If he gives no other name, the court may proceed accordingly.

§ 253. ANOTHER GIVEN—TO BE ENTERED.] If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

§ 254. TIME TO ANSWER.] If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

§ 255. SET ASIDE—DEMUR OR PLEAD.] If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

§ 256. CAUSES CLASSIFED.] The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found, indorsed and presented or filed, as prescribed in this act.
2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon.
3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section 195.
4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

§ 257. AFTERWARDS-PRECLUDED.] If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

§ 258. WHEN MOTION HEARD.] The motion must be heard at the time it is made, unless for good cause the court postpone the hearing to another time.

§ 259. ANSWER IMMEDIATELY.] If the motion be denied, the defendant must immediately answer to the indictment either by demurring or pleading thereto.

§ 260. WHEN DEFENDANT DISCHARGED.] If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be resubmitted to the same, or another grand jury.

§ 261. RESUBMISSION.] If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, and unless a new indictment is found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section.

§ 262. NOT A BAR.] An order to set aside an indictment, as provided in this chapter, is no bar to a further prosecution for the same offense.

CHAPTER III.

DEMURRER.

§ 263. DEFENDANT'S PLEADING.] The only pleading on the part of the defendant is either a demurrer or a plea.

§ 264. MADE IN OPEN COURT.] Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

§ 265. WHEN MAY DEMUR.] The defendant may demur to the indictment when it appears upon the face thereof, either:

1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county or subdivision.

2. That it does not substantially conform to the requirements of this act.

3. That more than one offense is charged in the indictment.

4. That the facts stated do not constitute a public offense.

5. That the indictment contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

§ 266. REQUISITES OF DEMURRER.] The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the indictment, or it must be disregarded.

§ 267. OBJECTIONS HEARD.] Upon the demurrer being filed, the objections presented thereby, must be heard, either immediately or at such time as the court may appoint.

§ 268. JUDGMENT OF COURT.] Upon considering the demurrer the court must give judgment, either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

§ 269. EFFECT IF SUSTAINED.] If the demurrer is sustained, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

§ 270. DEFENDANT DISCHARGED.] If the court do not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

§ 271. PROCEEDINGS IF RESUBMITTED.] If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in this act, or in sections 259 and 260.

§ 272. PLEA WHERE DEMURRER IS OVERRULED.] If the demurrer be overruled, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such a time as the court may allow. If he does not plead, judgment may be pronounced against him.

§ 273. CERTAIN OBJECTION—HOW TAKEN.] When the objections mentioned in section 265 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

CHAPTER IV.

PLEA.

§ 274. PLEAS CLASSIFIED.] There are three kinds of pleas to an indictment. A plea of:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged which may be pleaded either with or without the plea of not guilty.

§ 275. PLEA TO BE ORAL.] Every plea must be oral, and must be entered upon the minutes of the court.

§ 276. FORM OF PLEA.] The plea must be entered in substantially the following form:

1. If the defendant plead guilty:

The defendant pleads that he is guilty of the offense charged in this indictment.

2. If he plead not guilty:

The defendant pleads that he is not guilty of the offense charged in this indictment.

3. If he plead a former conviction or acquittal:

The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offense charged in this indictment, by the judgment of the court of .... (naming it) rendered at ...., (naming the place) on the .... day of ....

§ 277. REQUISITES IN PLEA OF GUILTY.] A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it can be put in by counsel.

§ 278. PLEA MAY BE WITHDRAWN.] The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

§ 279. ISSUES ON PLEA.] The plea of not guilty puts in issue every material allegation in the indictment.

§ 280. EVIDENCE UNDER PLEA.] All matters of fact tending to establish a defense other than that specified in the third subdivision of section 274, may be given in evidence under the plea of not guilty.

§ 281. FORMER ACQUITTAL NOT OF SAME OFFENSE.] If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

§ 282. SAME ON MERITS.] When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

§ 283. FORMER ACQUITTAL OR CONVICTION.] When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

§ 284. REFUSAL TO PLEAD.] If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

CHAPTER V.

THE REMOVAL OF THE ACTION BEFORE TRIAL.

§ 285. ACTION REMOVED—WHEN—HOW.] A criminal action, prosecuted by indictment, may, at any time before trial is begun, on the application of the defendant, be removed from the court in which it is pending, if the offense charged in the indictment be punishable with death, or imprisonment in the territorial prison, whenever it shall appear to the satisfaction of the court by affidavits, or if the court should so order by other testimony, that a fair and impartial trial cannot be had in such county or subdivision, in which case the court may order the person accused to be tried in some near or adjoining county, in any district where a fair and impartial trial can be had; but the party accused shall be entitled to a removal of the action but once, and no more, and if the accused shall make affidavit that he cannot have an impartial trial, by reason of the bias or prejudice of the presiding judge of the district court where the indictment is pending, the judge of such court may call any other judge of a district court to preside at such trial; and it shall be the duty of such other judge to so preside at said trial, and do any other act with reference thereto, as though he was presiding judge of said district court.

§ 286. DUTY OF CLERK.] The order of removal must be entered upon the minutes, and the clerk must thereupon make out and transmit to the court to which the action is removed, a certified copy of the order of removal and of the records, pleadings and proceedings in the action including the undertakings for the appearance of the defendant and of the witnesses.

§ 287. DISPOSITION OF DEFENDANT.] If the defendant is in custody, the order must provide for the removal of the defendant, by the sheriff of the county or subdivision where he is imprisoned, to the custody of the proper officer of the county or subdivision to which the action is removed, and he must be removed according to the terms of such order.

§ 288. COURT MAY REQUIRE BAIL.] When the court has ordered a removal of the action, it may require the accused, if the offense be then bailable, to enter into an undertaking with good and sufficient sureties to be approved by the court, in such sum as the court may direct, conditioned for his appearance in the court to which the action has been removed, on the first day of the next term thereof, and to abide the order of such court, and in default of such undertaking, a warrant shall be issued to the sheriff or other proper officer, commanding him safely to keep, and at the proper time to convey the prisoner to the jail of the county or subdivision where he is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

§ 289. WITNESS RECOGNIZED.] When a removal of the action is allowed, the court may recognize the witnesses on the part of the territory to appear before the court in which the defendant is to be tried.

§ 290. TRIAL, RECORDS AND PAPERS.] The court to which the action is removed must proceed to trial and judgment therein the same in all respects as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers, before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

§ 291. REMOVAL BY TERRITORY.] The district attorney on behalf of the territory, may also apply in a similar manner for a removal of the action, and the court being satisfied that it will promote the ends of justice, may order such removal upon the same terms and to the same extent as are provided in this chapter, and the proceedings on such removal shall be in all respects as above provided.

CHAPTER VI.

THE MODE OF TRIAL.

§ 292. ISSUE OF FACT.] An issue of fact arises:

1. Upon a plea of not guilty; or.
2. Upon a plea of a former conviction or acquittal of the same offense.

§ 293. HOW TRIED.] Issues of fact must be tried by a jury.

§ 294. DEFENDANT TO BE PRESENT.] If the indictment is for a felony, the defendant must be personally present at the trial, but if for a misdemeanor not punishable by imprisonment, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

CHAPTER VII.

FORMATION OF THE TRIAL JURY.

§ 295. WHO ARE JURORS.] The jurors duly drawn and summoned for the trial of civil actions, are also the jurors for the trial of criminal actions.

§ 296. TRIAL JURIES FORMED.] Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.

§ 297. CLERK TO PREPARE BALLOTS.] At the opening of the court the clerk must prepare separate ballots containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.

§ 298. NAMES OF ALL MAY BE CALLED.] When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court in its discretion may order that an attachment issue against those who are absent, but the court may, in its discretion, wait or not, for the return of the attachment.

§ 299. MANNER OF DRAWING JURY.] Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box.

§ 300. DISPOSITION OF BALLOTS.] When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

§ 301. SAME.] After the jury are so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

§ 302. WHEN JUROR ABSENT.] If a juror be absent when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

§ 303. IF ALL DO NOT APPEAR.] When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court may, in its discretion, order the sheriff to summon from the body of the county or subdivision, as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause may be selected.

§ 304. NAMES PUT IN BOX.] The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box mentioned in section 297.

§ 305. DRAWING THE JURY.] The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

§ 306. NUMBER OF JURY—HOW SWORN.] The jury consists of twelve men, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between the territory of Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, which verdict must be unanimous.

§ 307. IF NUMBER FAILS.] If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the body of the county or subdivision, so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury, must be impanelled and sworn.

§ 308. AFFIRMATION.] Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "So help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury.'

CHAPTER VIII.

POSTPONEMENT OF THE TRIAL.

§ 309. FOR CAUSE BY EITHER.] When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause by either party, direct the trial to be postponed to another day in the same or next term.

TITLE VIII.

OF PROCEEDING AFTER THE COMMENCEMET OF THE TRIAL AND BEFORE JUDGMENT.

CHAPTER I. Challenging the jury.
II. The trial.
III. Conduct of the jury after the cause is submitted to them.
IV. The verdict.
V. Bill of exception.
VI. New trials.
VII. Arrest of judgment.

CHAPTER I.

CHALLENGING THE JURY.

§ 310. CHALLENGES CLASSED.] A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel.
2. To an individual juror.

§ 311. SEVERAL DEFENDANTS.] When several defendants are tried together they cannot sever their challenges, but must join therein.

§ 312. PANEL DEFINED.] The panel is a list of jurors returned by a sheriff, to serve at a particular court, or for the trial of a particular action.

§ 313. CHALLENGE TO PANEL.] A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

§ 314. CAUSE FOR.] A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

§ 315. WHEN TAKEN.] A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

§ 316. ISSUE ON THE CHALLENGE.] If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

§ 317. PROCEEDINGS ON EXCEPTION.] If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed the court may, in like manner, permit an amendment of the challenge.

§ 318. WHEN CHALLENGE IS DENIED.] If the challenge is denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court, and the court must proceed to try the question of fact.

§ 319. TRIAL OF CHALLENGE.] Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

§ 320. BIAS OF OFFICER.] When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

§ 321. DISCHARGE OF JURY. If, upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, and another jury can be summoned for the same term forthwith, from the body of the county or subdivision; or the judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the court must direct the jury to be impanelled.

§ 322. CHALLENGING INDIVIDUAL JURORS.] Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

§ 323. NATURE OF CHALLENGE. A challenge to an individual juror is either:

1. Peremptory; or,
2. For cause.

§ 324. TAKEN BEFORE SWORN.] It must be taken when the juror appears, and before he is sworn, but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

§ 325. PEREMPTORY CHALLENGE.] A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

§ 326. DEFENDANT'S CHALLENGES.] In all criminal cases the defendant is entitled to the following challenges:

1. For capital offenses the defendant may challenge peremptorily twenty jurors.

2. In prosecutions for offenses punishable by imprisonment in the territorial prison, ten jurors.

3. In other prosecutions, three jurors.

§ 327. PROSECUTOR'S CHALLENGES.] The prosecuting attorney in capital cases may challenge peremptorily six jurors; in other cases, three jurors.

§ 328. CHALENGE FOR CAUSE.] A challenge for cause may be taken either by the territory or the defendant.

§ 329. FOR CAUSE CLASSED.] It is an objection to a particular juror, and is either:

1. General. that the juror is disqualified from serving in any case on trial; or,

2. Particular, that he is disqualified from serving in the case on trial.

§ 330. CLASSES OF GENERAL.] General causes of challenges are:

1. A conviction for felony.

2. A want of any of the qualifications prescribed by law, to render a person a competent juror, including a want of knowledge of the English language as used in the courts.

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

§ 331. PARTICULAR CAUSE.] Particular causes of challenge are of two kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially, without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

§ 332. FOR IMPLIED BIAS.] A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the sixth degree, inclusive, to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client,

master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

5. Having served on a trial jury which has tried another person for the offense charged in the indictment.

6. Having been one of a jury formerly sworn to try the indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

§ 333. NOT CAUSE, BUT PRIVILEGE.] An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

§ 334. CAUSES STATED ON CHALLENGE—OPINION.] In a challenge for implied bias, one or more of the causes stated in section 332 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 331 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expresed an opinion upon the matter or cause to be submitted to such jury, founded upon rumor, statements in public journals, or common notoriety, provided it appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered upon the minutes of the court.

§ 335. EXCEPTION TO CHALLENGE.] The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon, as prescribed in section 316, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

§ 336. HOW TRIED.] All challenges, whether to the panel or to individual jurors, shall be tried by the court, without the aid of triers.

§ 337. JUROR CHALLENGED A WITNESS.] Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

§ 338. OTHER WITNESSES.] Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

§ 339. DUTY OF COURT.] On the trial of a challenge, the court must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

§ 340. ORDER OF TAKING.] All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the territory, and each party must exhaust all his challenges before the other begins.

§ 341. ORDER OF CHALLENGES FOR CAUSE.] The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
2. To an individual juror for a general disqualification.
3. To an individual juror for implied bias.
4. To an individual juror for actual bias.

§ 342. PEREMPTORY CHALLENGES.] If all challenges on both sides are disallowed, either party, first the territory and then the defendant, may take a peremptory challenge, unless the party's peremptory challenges are exhausted.

CHAPTER II.

THE TRIAL.

§ 343. ORDER OF TRIAL.] The jury having been impanelled and sworn, the trial must proceed in the following order:

1. If the indictment is for felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In all other cases, this formality may be dispensed with.
2. The district attorney, or other counsel for the territory, must open the case and offer the evidence in support of the indictment.
3. The defendant or his counsel may then open his defense, and offer his evidence in support thereof.
4. The parties may then, respectively, offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the territory shall commence, and the defendant or his counsel shall follow, then the counsel for the territory shall conclude the argument to the jury.
6. The judge must then charge the jury; he may state the testimony, and must declare the law, but must not charge the jury in respect to matters of fact; such charge must, if so requested, be reduced to writing before it is given, unless by tacit or mutual consent it is given orally, or unless it is fully taken down at the time it is given by a stenographic reporter, appointed by the court.

§ 344. ORDER MAY BE CHANGED.] When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order of trial and argument prescribed in the last section may be departed from.

§ 345. COURT TO DECIDE LAW.] The court must decide all questions of law which arise in the course of the trial.

§ 346. JURY DETERMINE LAW AND FACT.] On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

§ 347. WHEN ONLY FACT.] On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, and questions of fact are to be decided by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

§ 348. RESTRICTION OF ARGUMENT.] If the indictment is for an offense punishable with death, three counsel on each side may argue the case to the jury. If it is for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

§ 349. PRESUMED INNOCENT.] A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

§ 350. DOUBT AS TO DEGREE.] When it appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

§ 351. DEFENDANT'S TRIED SEPARATELY.] When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly in the discretion of the court.

§ 352. DISCHARGE OF DEFENDANT AS WITNESS.] When two or more persons are included in the same indictment, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the territory.

§ 353. SAME—DUTY OF COURT.] When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed in order that he may be a witness for his co-defendant, submit its said opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

§ 354. RULES OF EVIDENCE.] The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code.

§ 355. TO CONVICT OF CONSPIRACY.] Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved, but any other overt act, not alleged in the indictment, may be given in evidence.

§ 356. SAME—ACCOMPLICE.] A conviction cannot be had upon the testimony of an accomplice unless he be corrobated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

§ 357. EVIDENCE OF FALSE PRETENSE.] Upon a trial for having, with an intent to cheat or defraud another designedly by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing unless the pretense or some note or memorandum thereof, be in writing, either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to a prosecution for falsely representing or personating another, and in such assumed character, marrying or receiving money or property.

§ 358. EVIDENCE OF SEDUCTION.] Upon a trial for inveigling, enticing or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, or for having under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon the testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

§ 359. COURT MAY SUSPEND PROCEEDINGS.] If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any new indictment which may be found against him for the higher offense.

§ 360. SAME NOT FORMER ACQUITTAL.] If an indictment for the higher offense is found by a grand jury impanelled within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last found indictment is not sustained by the fact of the discharge of the jury on the first indictment.

§ 361. ORIGINAL INDICTMENT.] If a new indictment is not found for the higher offense within a year as aforesaid, the court must again proceed to try the defendant on the original indictment.

§ 362. JURY MAY BE DISCHARGED.] The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

§ 363. DISPOSITION OF PRISONER.] If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this territory, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory, or district where the offense was committed.

§ 364. SAME—BAIL AND RECORDS.] If the offense was committed within the exclusive jurisdiction of another county of this territory, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking, and the clerk must forthwith transmit a certified copy of the indictment, and all the papers in the action, filed with him, to the district attorney of the proper county, the expense of which transmission is chargeable to that county.

§ 365. WHEN PRISONER DISCHARGED.] If the defendant is not arrested on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking, as mentioned in the last section, must be discharged.

§ 366. PROCEEDINGS IF DEFENDANT ARRESTED.] If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

§ 367. COURT MUST DISCHARGE PRISONER.] If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be re-submitted to the same or another grand jury.

§ 368. MAY ADVISE JURY TO ACQUIT.] If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice, nor can the court, for any cause, prevent the jury from giving a verdict.

§ 369. JURY MAY VIEW PLACE.] When, in the opinion of the court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

§ 370. MUST BE DECLARED IN COURT.] If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court during the trial. If, during the retirement of a jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

§ 371. CUSTODY AND CONDUCT OF JURY.] The jurors sworn to try an indictment, may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

§ 372. JURY ADMONISHED BY COURT.] The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

§ 373. WHEN JUROR BECOMES SICK.] If, before the conclusion of a trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impanelled.

§ 374. MURDER—BURDEN OF PROOF.] Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

§ 375. BIGAMY—PROOF ON TRIAL.] Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of this territory, proof of that fact, accompanied with proof of cohabitation thereafter in this territory, is sufficient to sustain the charge.

§ 376. FORGERY—SAME.] Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

§ 377. REQUISITES OF COURT'S CHARGE.] In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it state the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given, if not, it must be refused. Upon each charge presented and given or refused, the court must indorse or sign its decision. If part of any written charge be given and part refused, the court must distinguish, showing by the indorsement or answer what part of each charge was given and what part refused.

§ 378. JURY AFTER CHARGE.] After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

§ 379. DEFENDANT MAY BE COMMITTED.] When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

§ 380. SUBSTITUTE FOR DISTRICT ATTORNEY.] If the district attorney fails, or is unable to attend at the trial, the court must appoint some attorney at law to perform the duties of the district attorney on such trial.

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

§ 381. JURY ROOM.] A room must be provided by the board of commissioners of the county, for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

§ 382. FOOD AND LODGING.] While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county, with suitable and sufficient food and lodging.

[illegible] the jury may [illegible] all papers which have been received as evidence in the [illegible] copies of such parts of public records or private documents given in evidence, [illegible] as ought not, in the opinion of the court, to be taken from the person having them in possession.

§ 384. Jury may be brought into court.] After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the district attorney and the defendant or his counsel, or after they have been called.

§ 385. Juror sick.] If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

§ 386. Cannot be discharged until.] Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

§ 387. Cause retried.] In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the court may direct.

§ 388. Adjournment while jury absent.] While the jury are absent the court may adjourn from time to time as to other business, but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged.

§ 389. Discharge of jury.] A final adjournment of the court discharges the jury.

CHAPTER IV.

THE VERDICT.

§ 390. Return of verdict.] When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

§ 391. Verdict in presence of defendant.] If the indictment is for a felony the defendant must, before the verdict is received, appear in person. If it is for a misdemeanor, the verdict may, in the discretion, of the court, be rendered in his absence.

§ 392. [illegible] When the jury appear, they must be asked by the court, or the clerk, whether they have agreed upon their verdict, and if the foreman answer in the affirmative, they must, on being required, declare the same.

§ 393. Verdict.] The jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

§ 394. Form of general verdict.] A general verdict upon a plea of not guilty, is either "guilty," or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the territory," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

§ 395. Special verdict.] A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence and not the evidence to prove them, and the conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

§ 396. Special verdict to be written.] The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

§ 397. Form of special verdict.] The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury.

§ 398. Argument of special verdict.] The special verdict may be brought to argument by either party, upon two days notice to the other, at the same or another term of the court.

§ 399. Judgment upon special verdict.] The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under the indictment, judgment must be given accordingly, but if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

§ 400. New trial.] If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

§ 401. DEGREE MUST BE FOUND.] Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

§ 402. MAY FIND ANY DEGREE.] The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

§ 403. SAME—SEVERAL DEFENDANTS.] On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

§ 404. JURY RECONSIDER VERDICT.] When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

§ 405. SAME.] If the jury render a verdict which is neither a general nor a special verdict, the court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

§ 406. JUDGMENT IF JURY PERSIST.] If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

§ 407. JURY MAY BE POLLED.] When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

§ 408. CLERK TO RECORD VERDICT.] When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

§ 409. WHEN DEFENDANT TO BE DISCHARGED.] If the judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred in the same manner and with like effect, as provided in 367.

§ 410. COMMITTAL OF DEFENDANT.] If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

§ 411. DEFENSE INSANITY, AND JURY ACQUITS.] If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.

CHAPTER V.

BILLS OF EXCEPTION.

§ 412. EXCEPTIONS TO MATTERS OF LAW.] On the trial of an indictment, exceptions may be taken by the defendant to the decision of the court upon a matter of law by which his substantial rights are prejudiced, and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.
2. In admitting or rejecting witnesses or testimony, on the trial of a challenge to a juror for actual bias.
3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

§ 413. BILL SIGNED AND FILED.] A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

§ 414. CHARACTER OF BILL OF EXCEPTIONS.] The bill of exceptions must be settled at the trial, unless the court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added, until it is made conformable to the truth.

§ 415. WHEN PREPARED IF NOT SETTLED AT TRIAL.] If the bill of exceptions be not settled at the trial, it must be prepared and served within three days thereafter, on the district attorney, who may, within three days thereafter, serve on the defendant or his counsel, amendments thereto. The defendant may then, within three days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, not less than five, nor more than ten days thereafter, to have the bill of exceptions settled.

§ 416. JUDGE TO SETTLE AND SIGN.] At the time appointed the judge must settle and sign the bill of exceptions.

§ 417. Time may be enlarged.] The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by the consent of the parties, or by the presiding judge.

§ 418. Exceptions deemed abandoned.] If the bill of exceptions be not served within the time prescribed in section 415, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited by section 415, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, the other to the amendments.

§ 419. What exceptions to contain.] The bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein

§ 420. To be filed.] The bill of exceptions must be filed with the clerk of the court at the time of, or before, taking the writ of error.

§ 421. Other exceptions] Exceptions may be taken by either party to a decision of the court or judge upon a matter of law.

1. In granting or refusing a motion in arrest of judgment.
2. In granting or refusing a motion for a new trial.

CHAPTER VI.

NEW TRIALS.

§ 422. New trials.] A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment.

§ 423. Court has power to grant a new trial.] The court in which a trial has been had upon an issue of fact, has power to grant a new trial, when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

1. When the trial has been had in his absence, if the indictment is for felony.
2. When the jury has received any evidence out of court other than that resulting from a view of the premises.
3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.
4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

§ 424. BEFORE JUDGMENT.] The application for a new trial must be made before judgment.

CHAPTER VII.

ARREST OF JUDGMENT.

§ 425. MOTION FOR DEFINED.] A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 265, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

§ 426. ARREST OF JUDGMENT—NO BAR.] The court may also, on its own view of any of these defects, arrest the judgment, without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, and in no case of arrest of judgment is the verdict a bar to another prosecution or indictment.

§ 427. GUILTY, BUT INDICTMENT INSUFFICIENT.] If, from the evidence on the trial there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county or subdivision, or admitted to bail anew to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded.

TITLE IX.

OF JUDGMENT AND EXECUTION.

CHAPTER I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

§ 428. COURT APPOINTS TIME FOR.] After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment is not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment.

§ 429. TIME SPECIFIED.] The time appointed must be at least two days after the verdict if the court intend to remain in session so long, or if not at as remote a time as can reasonably be allowed.

§ 430. DEFENDANT'S ABSENCE.] For the purpose of judgment, if the conviction is for a misdemeanor, judgment may be pronounced in his absence.

§ 431. OFFICER TO PRODUCE PRISONER.] When the defendant is in custody the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer must do so accordingly.

§ 432. BENCH WARRANT.] If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 433. SAME—DUTY OF CLERK.] The clerk, on the application of the district attorney may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

§ 434. FORM OF WARRANT.] The bench warrant must be substantially in the following form:

County of....

The territory of Dakota. To any sheriff, constable, marshal or policeman in this territory.

A B having been, on the .... day of .... A. D. 18.., duly convicted in the district court of the county of ...., of the crime of (designating it generally,) you are therefore commanded forthwith to arrest the above named A B, and bring him before that court for judgment, or if the court has adjourned for the term, you are to deliver him into the custody of the sheriff of the county of ...., (as the case may be.)

Given under my hand, with the seal of said court affixed, this .... day of ...... A. D. eighteen hundred and ....

By order of the court.

[SEAL.] E F, Clerk.

§ 435. HOW WARRANT SERVED.] The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county, it need not be endorsed by a magistrate of that county.

§ 436. DISPOSAL OF DEFENDANT.] Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 437. DEFENDANT INFORMED BY COURT.] When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

§ 438. MAY SHOW CAUSE AGAINST JUDGMENT.] He may show for cause against the judgment:

1. That he is insane, and if in the opinion of the court there is reasonable ground for believing him to be insane, the question of his in-

sanity must be tried as hereinafter in this code provided for. If upon the trial of that question the jury find that he is sane, judgment must be pronounced, but if they find him insane he may be committed to the territorial lunatic asylum, if there be one, until he becomes sane or be otherwise committed according to law, and when notice is given of that fact as hereinafter provided for, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment, or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

§ 439. JUDGMENT RENDERED.] If no sufficient cause be alleged, or appear to the court why judgment should not be pronounced, it must thereupon be rendered.

§ 440. COURT HEAR FURTHER EVIDENCE] After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court upon the suggestion of either party, that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

§ 441. HOW PRESENTED.] The circumstances must be presented, by the testimony of witnesses examined in open court, except, that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

§ 442. OTHER EVIDENCE PROHIBITED.] No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by, the court or member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

§ 443. JUDGMENT IN TWO OFFENSES.] If the defendant have been convicted of two or more offenses, before judgment on either, the judgment may be, that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

§ 444. FINE AND IMPRISONMENT.] A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine.

§ 445. FINE CONSTITUTES A LIEN.] A judgment that the defendant pay a fine constitutes a lien, also, in like manner, as a judgment for money rendered in a civil action.

§ 446. PAPERS FILED BY CLERK.] When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1. The indictment and a copy of the minutes of the plea or demurrer.
2. A copy of the minutes of the trial.

3. The charges given or refused, and the indorsements, if any, thereon; and

4. A copy of the judgment.

CHAPTER II.

THE EXECUTION.

§ 447. PAPERS FURNISHED OFFICER.] When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

§ 448. WHEN FOR FINE.] If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil action.

§ 449. FOR IMPRISONMENT.] If the judgment be imprisonment, or a fine and imprisonment, until such fine be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

§ 450. IMPRISONMENT OR FINE.] When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county or subdivision. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

§ 451. IMPRISONMENT IN TERRITORIAL PRISON.] If the judgment is for imprisonment in the territorial prison the sheriff of the county or subdivision must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden, superintendent or keeper of the territorial prison. He must also deliver to the warden or other proper officer a certified copy of the judgment, and take from the warden or other proper officer a receipt for the defendant, and make return thereof to the court.

§ 452. AUTHORITY WHILE CONVEYING PRISONER.] The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this territory, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county, and every person who refuses or neglects to assist the sheriff, when so required, is punishable as if the sheriff were in his own county.

§ 453. PROCEEDINGS ON JUDGMENT OF DEATH.] When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant duly attested by the clerk under the seal of the court stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than thirty, nor more than sixty days from the time of the judgment.

§ 454. DUTY OF JUDGE IN SUCH CASE.] The judge of a court at which a conviction requiring judgment of death is had, must, immediately after the conviction transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

§ 455. GOVERNOR MAY REQUIRE OPINION OF JUDGES.] The governor may thereupon require the opinion of the judges of the supreme court or any of them, upon the statement so furnished.

§ 456. GOVERNOR ONLY CAN REPRIEVE.] No judge, court or officer other than the governor can reprieve or suspend the execution of a judgment of death, except the sheriff in the cases provided in the next seven sections, unless a writ of error is allowed and taken.

§ 457. IF DEFENDANT BECOME INSANE.] If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected or to be selected forthwith by the county commissioners a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney.

§ 458. INQUISITION TO TRY INSANITY.] The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

§ 459. RETURN OF CERTIFICATE.] A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerks of the court in which the conviction was had.

§ 460. DUTY OF SHERIFF ON THE FINDING.] If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor, or from a majority of the judges of the supreme court, directing the execution of the judgment.

§ 461. SAME.] If the inquisition find that the defendant is insane, the sheriff must immediately transmit to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

§ 462. FEMALE PREGNANT—INQUISITION.] When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the territory to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney. The provisions of sections 460 and 461 apply to the proceedings upon the inquisition.

§ 463. DUTY OF SHERIFF ON FINDING.] If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor.

§ 464. GOVERNOR TO ORDER EXECUTION.] When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

§ 465. DUTY OF COURT WHEN JUDGMENT NOT EXECUTED.] If, for any reason, a judgment of death has not been executed, and it remains in force, the court, in which the conviction was had, on the application of the district attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued.

§ 466. SAME.] Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

§ 467. HOW DEATH PRODUCED.] The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

§ 468. DEATH—WHERE EXECUTED.] A judgment of death must be executed within the walls or yard of a jail of the county in which the conviction was had, or some convenient private place in the county. If there is no such jail or prison in the county in which the conviction was had, or if it becomes unfit or unsafe for the confinement of prisoners, or is destroyed by fire or otherwise, and the jail of another county has been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed in manner as above.

§ 469. PRESENT AT EXECUTION.] The sheriff or deputy-sheriff of the county must be present at the execution, and must invite the presence, by at least three days notice, of the district attorney, together with one physician and twelve reputable citizens, to be selected by him. He must also, at the request of the defendant, permit any minister or ministers of the gospel whom the defendant may name, and any of his relatives or friends, not to exceed five, to attend the execution, and also such peace officers as the sheriff or under-sheriff may deem proper. But no persons other than those mentioned in this section can be present at the execution. nor can any person under age be allowed to witness the same.

§ 470. RETURN OF EXECUTION.] The sheriff or deputy-sheriff must prepare and sign, with their names of office, a certificate attached to the death warrant, setting forth the time, manner and place of the execution, and that the judgment was executed upon the defendant according to the provisions of the last three sections, and attested by at least twelve persons, not relatives of the defendant, who witnessed the execution.

§ 471. SHERIFF TO FILE CERTIFICATE.] The sheriff or deputy sheriff must cause the certificate to be filed in the office of the clerk of the court.

TITLE X.

WRIT OF ERROR.

CHAPTER I. Writs of error, when allowed and how taken, and the effect thereof.
II. Dismissing the writ for irregularity.
III. Argument of the writ.
IV. Judgment in supreme court.

CHAPTER I.

WRITS OF ERROR, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

§ 472. WRIT OF ERROR.] Either party may sue out a writ of error to remove to the supreme court, and therein to re-examine and review the record and bills of exception in a criminal action, upon matters of law, decided in the district courts in manner as prescribed in this chapter.

§ 473. PROCEEDINGS TO OBTAIN WRIT.] Writs of error shall be allowed in all cases from the final decisions of said district courts, to the supreme court, under such regulations as are herein or may be prescribed by law. The party seeking the writ must apply to the judge, or to a justice of the supreme court, by petition, verified by affidavit, setting forth clearly and succinctly the chief matters of error complained of.

§ 474. TITLE OF PARTIES TO WRIT.] The party sueing out the writ is known as the plaintiff in error, and the adverse party as the defendant in error, but the title of the action is not changed in consequence of the writ.

§ 475. WHEN BY DEFENDANT.] The writ may be sued out by the defendant:

1. From a final judgment of conviction.
2. From an order refusing a motion in arrest of judgment.
3. From an order refusing a motion for a new trial.
4. Upon bills of exception for any of the causes mentioned in section 412 of this code.

§ 476. BY THE TERRITORY.] The writ may be sued out by the territory:

1. From a judgment for the defendant on a demurrer to the indictment.
2. From an order arresting the judgment.
3. From an order granting a new trial.

§ 477. LIMIT OF TIME FOR WRIT.] The writ must be sued out within one year after the rendition of the judgment, and within sixty days after an order is made.

§ 478. EFFECT OF WRIT.] A writ sued out by the territory, in no case, stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

§ 479. SUPERSEDEAS.] A writ of error from the supreme court to remove and re-examine or review a judgment of conviction; stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the judges of such court, or of a justice of the supreme court, that in his opinion there is probable cause for the writ, but not otherwise.

§ 480. DUTY OF SHERIFF.] If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment of the supreme court.

§ 481. EXECUTION SUSPENDED.] If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

§ 482. CLERK'S RETURN ON WRIT.] Upon the writ of error being sued out, the clerk of the court upon whom it is served, must within ten days thereafter or within such reasonable time as may be allowed to him, transmit to the clerk of the supreme court the writ with his return thereon, to which shall be annexed and returned an authenticated copy of the record of this action as mentioned in section 448, and of all bills of exception, together with an assignment of errors and prayer for reversal.

§ 483. RETURN TO CONTAIN CERTIFICATE OF JUDGE.] The return must also embrace a certificate of the judge or of a justice of the supreme court that the record contains in itself all the bills of exception and a true copy of all the evidence bearing upon or necessarily relating to any bill of exception.

§ 484. EXCEPTIONS TO CHARGE.] The judges of the district courts shall not allow any bills of exception which shall contain the charge of the court at large to the jury, upon any general exception to the whole of such charge, but the party excepting shall be required to state distinctly the several and particular matters of law in such charge to which he excepts, and such matters of law, and those only, shall be inserted in the bills of exception, and allowed by the court.

§ 485. ADVERSE PARTY NOTIFIED.] Immediately after the issuing of the writ, a citation to the adverse party to be and appear at the supreme court, to be issued by the clerk thereof, shall be served on him or his attorney, giving at least ten days notice thereof.

§ 486. CONCERNING CERTIORARI.] No certiorari for diminution of the record shall be hereafter awarded in any action, unless a motion therefor shall be made in writing, and the facts on which the same is founded, shall, if not admitted by the other party, be verified by affidavit, and all motions for such certiorari, shall be made at the first term of the entry of the action; otherwise, the same shall not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

CHAPTER II.

DISMISSING THE WRIT FOR IRREGULARITY.

§ 487. IN SUBSTANTIAL PARTICULARS.] If the writ is irregular in any substantial particular, but not otherwise, the court may, on any day in term on motion of the defendant in error upon two days notice, with copies of the papers on which the motion was founded, order it to be dismissed.

§ 488. FOR ERROR IN RETURN.] The court may also upon like motion dismiss the writ, if the return is not made as provided in sections 484 and 485, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE WRIT.

§ 489. HOW BROUGHT ON.] The writ of error may be brought to argument by either party on ten days notice, on any day, at a general or adjourned term of the supreme court, but it must be heard and determined at the first term after the record is filed, unless for good cause shown.

§ 490. WHAT PLAINTIFF TO FURNISH.] When the writ is called for argument, the plaintiff in error must furnish each member of the court with a copy of the record of the action, bills of exception, and of the assignment of errors. If he fails to do so, the writ must be dismissed unless for cause shown the court otherwise direct.

§ 491. FAILURE TO APPEAR.] The judgment may be affirmed if the plaintiff in error fails to appear, but can be reversed only after argument, though the defendant in error fails to appear.

§ 492. NUMBER OF COUNSEL HEARD.] Upon the argument of the writ, if the offense is punishable with death, three counsel on each side must be heard, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side.

CHAPTER IV.

JUDGMENT IN SUPREME COURT.

§ 493. WHEN COURT MUST GIVE JUDGMENT.] After hearing the writ, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties.

§ 494. POWER OF SUPREME COURT.] The supreme court may reverse, affirm or modify the judgment or order of the district court, and may, if proper, order a new trial.

§ 495. DUTY OF COURT IF JUDGMENT IS REVERSED.] If a judgment against the defendant is reversed, without ordering a new trial, the supreme court must direct, if he is in custody, that he be discharged therefrom, or if on bail, that his bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant.

§ 496. WHEN ORIGINAL JUDGMENT MUST BE ENFORCED.] On a judgment of affirmance against the defendant, the original judgment must be enforced.

§ 497. DISPOSITION OF JUDGMENT FROM SUPREME COURT.] When the judgment of the supreme court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the district court.

§ 498. WHEN SUPREME COURT HAS NO FURTHER JURISDICTION.] After the certificate of the judgment has been remitted to the court below, the supreme court has no further jurisdiction of the writ, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

TITLE XI.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. Compelling the attendance of witnesses.
II. Inquiring into the insanity of the defendant before trial or after conviction.
III. Compromising misdemeanors by leave of the court.
IV. Proceedings against corporations.
V. Entitling affidavits.
VI. Errors and mistakes in pleadings or other proceedings.
VII. Disposal of property stolen or embezzled.
VIII. Reprieves, commutations and pardons.
IX. Bail.
X. Of search warrants.
XI. Proceedings against fugitives from justice.
XII. Dismissal of the action before or after indictment, for want of prosecution or otherwise.
XIII. General provisions and definitions applicable to this code.

CHAPTER I.

COMPELLING THE ATTENDANCE OF WITNESSES.

§ 499. SUBPOENA DEFINED.] The process by which the attendance of a witness before a court or magistrate is required is a subpoena.

§ 500. MAGISTRATES MAY ISSUE.] A magistrate before whom an information is laid, or to whom a presentment of a grand jury is sent, may issue subpœnas, subscribed by him, for witnesses within the territory, either on behalf of the territory or the defendant.

§ 501. DISTRICT ATTORNEY FOR GRAND JURY.] The district attorney may issue subpœnas, subscribed by him, for witnesses within the territory, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon an investigation before them.

§ 502. SAME FOR TRIAL.] The district attorney may in like manner issue subpœnas for witnesses within the territory, in support of an indictment, to appear before the court at which it is to be tried.

§ 503. CLERK ISSUES BLANK FOR DEFENDANT.] The clerk of the court at which an indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the territory, as may be required by the defendant.

§ 504. FORM OF.] A subpœna authorized by the last four sections must be substantially in the following form:

In the name of the territory of Dakota:
To A B:

You are commanded to appear before C D, a justice of the peace at the town of ...., (or "the grand jury of the county of ... ," or "the district court ....," or as the case may be,) on (stating the day and hour,) as a witness in a criminal action prosecuted by the territory of Dakota against E F.

Dated at the town of ...., (as the case may be) the .... day of ...., 18..

"G H, justice of the peace," or "I K, district attorney," or "by order of the court, L M, clerk," (as the case may be.)

§ 505. SUBPOENA DUCES TECUM.] If the books, papers or documents be required, a direction to the following effect must be contained in the subpœna:

And you are required also to bring with you the following: (*Describe intelligibly the books, papers or documents required.*)

§ 506. BY WHOM SERVED.] A peace officer must serve in his county, city, town or village, as the case may be, any subpœna delivered to him for service, either on the part of the territory or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay. A subpœna may, however, be served by any other person.

§ 507. HOW SERVED.] A subpœna is served by delivering it, or by showing it, and delivering a copy thereof to the witnesses personally.

§ 508. WITNESS' EXPENSES.] When a person attends before a magistrate, grand jury, or court, as a witness on behalf of the territory, upon a subpœna, or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of a witness be upon a trial, by an order entered upon its minutes, or in any other case, the district judge, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order for his expenses.

§ 509. PAYMENT.] Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

§ 510. WITNESS RESIDING OUT OF COUNTY.] No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the offense is triable, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness material, and his attendance at the examination or trial necessary, shall indorse on the subpœna an order for the attendance of the witness.

§ 511. DISOBEDIENCE TO SUBPOENA.] Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt, in the manner provided in the code of civil procedure.

§ 512. WITNESS FOR DEFENDANT DISOBEYING.] A witness disobeying a subpœna issued on the part of the defendant, also forfeits to the defendant the sum of fifty dollars, which may be recovered in a civil action.

CHAPTER II.

INQUIRING INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

§ 513. RE-ENACTMENT.] Chapter V, of article VIII, of title XI, of an act to establish a code of criminal procedure for Dakota Territory, approved January 12, 1869, said chapter being headed, "Inquiry into the insanity of the defendant before trial or after conviction," so far as the same is not in conflict with the provisions of this present act, is hereby revived and re-enacted. The remainder of this chapter is the law referred to.

§ 514. INSANE CANNOT BE TRIED.] An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment or punished for a public offense, while he is insane.

§ 515. WHEN DOUBT ARISES.] When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the court must order a jury to be impaneled, from the jurors summoned and returned for the term, or who may be summoned by direction of the court as provided in sections 303 to 308, both inclusive, to inquire into the fact.

§ 516. TRIAL TO BE SUSPENDED.] The trial of the indictment or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

§ 517. ORDER OF TRIAL.] The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity.

2. The counsel for the territory may then open their case and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the

jury on either side or on both sides, without argument, the counsel for the territory must commence, and the defendant or his counsel may conclude the argument to the jury.

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

6. The court must then charge the jury.

§ 518. CHARGE OF COURT.] The provisions of sections 345 and 347, in respect to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions of section 377, in respect to the charge of the court to the jury, upon the trial of an indictment or information, apply to the question of insanity.

§ 519. IF SANE, TRIAL PROCEEDS.] If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be.

§ 520. IF FOUND INSANE.] If the jury find the defendant is insane, the trial or judgment must be suspended until he becomes sane, and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be, in the meantime, committed to the care of the sheriff until he becomes sane.

§ 521. IF COMMITTED, BAIL.] The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant, to a return of money he may have deposited instead of bail.

§ 522. RESTORED TO SANITY.] When he becomes sane the sheriff must thereupon without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

§ 523. EXPENSES.] The expenses of keeping the defendant are in the first instance chargeable to the county, but the county may recover them from the estate of the defendant, if he have any, or from a relative.

CHAPTER III.

COMPROMISING MISDEMEANORS BY LEAVE OF THE COURT.

§ 524. LIMITATION.] When a defendant is held to answer on a charge of misdemeanor, for which the person by the act constituting the offense, has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed:

1. By or upon an officer of justice while in the execution of the duties of his office.

2. Riotously; or

3. With an intent to commit a felony.

§ 525. TO BE BY PERMISSION.] If the party injured appear before the court to which the depositions and statement are required by section 160 to be returned, at any time before trial on an indictment for the offense and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein and entered upon the minutes.

§ 526. ORDER A BAR.] The order authorized by the last section is a bar to another prosecution for same offense.

§ 527. NO PUBLIC OFFENSE COMPROMISED.] No public offense can be compromised, nor can any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in sections 524 and 525.

CHAPTER IV.

PROCEEDINGS AGAINST CORPORATIONS.

§ 528. SUMMONS.] Upon a presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the charge. The time to be not less than ten days after the issuing of the summons.

§ 529. FORM OF SUMMONS.] The summons must be in substantially the following form:

County of ....
In the name of the territory of Dakota.
To the (naming the corporation):-

You are hereby summoned to appear before me at (naming the place,) on (specifying the day and hour) to answer to the charge made against you, upon the information of A B, (or the presentment of the grand jury of the county of .... for (designating the offense generally.)

Dated at the city, or town, of ...., the .... day of ...., 18..
G H, Justice of the peace, (or as the case may be)

§ 530. WHEN AND HOW SERVED.] The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 531. EXAMINATION OF CHARGE.] At the time appointed in the summons the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 532. CERTIFICATE OF MAGISTRATE.] After hearing the proofs the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate in the same manner prescribed in section 160.

§ 533. GRAND JURY MAY PROCEED.] If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

§ 534. APPEARANCE AND PLEA.] If an indictment be found, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 535. FINE COLLECTED.] When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution.

CHAPTER V.

ENTITLING AFFIDAVITS.

§ 536. ENTITLING UNNECESSARY.] It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon a writ of error, but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or writ of error, in which it is made.

CHAPTER VI.

ERRORS AND MISTAKES IN PLEADINGS, OR OTHER PROCEEDINGS.

§ 537. INFORMALITIES NOT FATAL.] Neither a departure from the form or mode prescribed in this code in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

CHAPTER VII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

§ 538. TO BE HELD BY OFFICER.] When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

§ 539. ORDER FOR ITS DELIVERY.] On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

§ 540. MAGISTRATE MUST DELIVER ON PROOF.] If property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

§ 541. COURT MAY DELIVER BY ORDER.] If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

§ 542. IF NOT CLAIMED IN SIX MONTHS.] If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person stealing or embezzling it, the magistrate or other officer having it in his custody, must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioners to be paid into the county treasury.

§ 543. RECEIPT TO DEFENDANT AND CLERK.] When money or other property is taken from a defendant, arrested upon a charge of public offense, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the clerk of the court to which the depositions and statement must be sent, as provided in section 160.

CHAPTER VIII.

REPRIEVES, COMMUTATIONS AND PARDONS.

§ 544. RE-ENACTMENT.] Chapter XII of article VIII of title XI of the aforesaid act of January 12, 1869, said chapter being entitled, "reprieves, commutations and pardons," so far as the said chapter is in accordance with the organic act, and consistent with the provisions of this code, is hereby revived and re-enacted. The remainder of this [chapter is the law referred to.

§ 545. GOVERNOR MAY GRANT.] The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter.

§ 546. TREASON—DUTY OF LEGISLATURE.] He may also suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the legislature, at the next meeting, when the legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

§ 547. REPORT TO LEGISLATURE.] He must annually communicate to the legislature, each case of reprieve, commutation or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 548. REPORT OF CASES REQUIRED.] When an application is made to the governor for a pardon, he may require the presiding judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with the statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.

§ 549. NOTICE TO DISTRICT ATTORNEY.] At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof by affidavit of the service, must be presented by the governor: *Provided*, Such application is not signed by such district attorney.

§ 550. PUBLICATION OF NOTICE.] Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in the territorial paper, and a paper in the county in which the conviction was had, nearest the place of conviction.

§ 551. PAPERS FILED WITH SECRETARY.] When the governor grants a reprieve, commutation or pardon, he must, within ten days thereafter, file all the papers presented to him in relation thereto, in the office of the secretary of the territory, by whom they must be kept as records, open to public inspection.

CHAPTER IX.

OF BAIL.

§ 552. MUST BE ADMITTED, WHEN.] Bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases where the offense is not punishable by death, and in such cases it may be taken by any of the persons or courts authorized by law to arrest and imprison offenders.

§ 553. MAY, WHEN.] Bail, by sufficient sureties, may be admitted upon all arrests in criminal cases where the punishment may be death, unless the proof is evident or the presumption great; but in such cases it shall be taken only by the supreme court or a district court, or by a justice or judge thereof, who shall exercise their discretion therein, having regard to the nature and circumstances of the offense, and of the evidence, and to the usages of law.

§ 554. AFTER CONVICTION—CLASSED.] After conviction of an offense not punishable with death, a defendant who sues out a writ of error for the revision of a judgment may be admitted to bail:

1. As a matter of right when the writ of error is from a judgment imposing a fine only.
2. As a matter of discretion in all other cases.

§ 555. QUALIFICATION AND JUSTIFICATION.] The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the magistrate, court or judge, that they each possess those qualifications.

§ 556. DISCHARGE OF DEFENDANT.] Upon the allowance of bail and the execution of the requisite recognizance, bond or undertaking, to the territory, the magistrate, judge or court must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

§ 557. DEPOSIT FOR BAIL.] A deposit of the sum of money mentioned in the order admitting to bail, is equivalent to bail, and upon such deposit the defendant must be discharged from custody.

§ 558. ARREST BY BAIL.] Any party charged with a criminal offense and admitted to bail, may be arrested by his bail at any time before they are finally discharged, and at any place within the territory, or by a written authority indorsed on a certified copy of the recognizance, bond or undertaking, may empower any officer or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper sheriff or other officer, before any court, judge or magistrate having the proper jurisdiction in the case, and at the request of such bail, the court, judge or magistrate shall recommit the party so arrested to the custody of the sheriff or other officer, and indorse on the recognizance, bond or undertaking, or certified copy thereof, after notice to the district attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail, and the party so committed shall therefrom be held in custody until discharged by due course of law.

§ 559. FORFEIT—EXCUSE.] If, without sufficient excuse, the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking, either for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court, or before the magistrate, may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the recognizance, bond or undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be, thereupon declared forfeited. But, if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture to be discharged upon such terms as may be just. After the forfeiture, the district attorney must proceed with all due diligence, by action against the bail upon the instrument so forfeited. If money deposited instead of bail be so forfeited, the clerk of the court or other officer, with whom it is deposited, must, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer.

§ 560. ADDITIONAL SECURITY.] When proof is made to any court, judge or other magistrate, having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the territory, the judge or magistrate shall require such person to give better security, or for default thereof, cause him to be committed to prison, and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof.

CHAPTER X.

OF SEARCH WARRANTS.

§ 561. SEARCH WARRANT DEFINED.] A search warrant is an order in writing in the name of the territory, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

§ 562. GROUNDS FOR ITS ISSUE.] It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

2. When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

3. When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered. In which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

§ 563. PROBABLE CAUSE.] A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

§ 564. ISSUED ON SWORN COMPLAINT.] The magistrate must, before issuing the warrant, take, on oath, the complaint of the prosecuting witness in writing, which must set forth the facts tending to establish the grounds of whereof is punishment by imprisonment in the territorial prison, shall be the application, or probable cause for believing that they exist.

§ 565. REQUISITES OF WARRANT.] If the magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found to be dealt with according to law.

§ 566. FORM OF WARRANT.] The warrant must be in substantially the following form:

County of ..

In the name of the territory of Dakota. To any sheriff, constable, marshal or policeman in the county of ...

Proof by affidavit having been this day made before me, by (naming every person whose affidavit has been taken,) the (stating the particular grounds of the application according to section 562, or if the affidavit be not positive) that there is probable cause for believing that (stating the grounds of the application in the same manner.)

You are therefore commanded, in the day time, (or "at any time of the day or night," as the case may be, according to section 570) to make immediate search on the person of C. D. (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be,) for the following property (describing it with reasonable particularity,) and if you find the same, or any part thereof, to bring it forthwith before me, at (stating the place.)

Dated at .... the .... day of ...., 18..

E. F., justice of the peace of the city, (or town) of (or as the case may be.)

§ 567. BY WHOM SERVED.] A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requiring it, he being present and acting in its execution.

§ 568. OFFICER MAY BREAK DOOR.] The officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

§ 569. SAME.] He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 570. SERVED IN NIGHT, WHEN.] The magistrate must insert a direction in the warrant that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched. In which case he may insert a direction that it be served at any time of the day or night.

§ 571. VOID AFTER TEN DAYS.] A search warrant must be executed and returned to the magistrate by whom it was issued within ten days. After the expiration of these times respectively, the warrant, unless executed, is void.

§ 572. PROPERTY, HOW DISPOSED OF.] When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 540 to 543, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section 562, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

§ 573. RETURN OF WARRANT.] The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect:

I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

§ 574. COPY OF INVENTORY.] The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

§ 575. COMPLAINT CONTROVERTED.] If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

§ 576. TESTIMONY—HOW TAKEN.] The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in sections 143 and 145.

§ 577. PROPERTY TO BE RESTORED.] If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

§ 578. DEPOSITIONS RETURNED.] The magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the next district court of the county having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day.

§ 579. WITHOUT CAUSE.] A person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

§ 580. OFFICER EXCEEDING AUTHORITY.] A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

§ 581. SEARCHING DEFENDANT BY MAGISTRATE.] When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

CHAPTER XI.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

§ 582. GOVERNOR MAY OFFER REWARD.] The governor may offer a reward not exceeding one thousand dollars, payable out of the territorial treasury, for the apprehension:

1. Of any convict who has escaped from the territorial prison; or,
2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

§ 583. DELIVERY ON REQUISITION.] A person charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this territory, must on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this territory, to be removed to the state or territory having jurisdiction of the crime.

§ 584. MAGISTRATE TO ISSUE WARRANT.] A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this territory.

§ 585. PROCEEDINGS.] The proceedings for the arrest and commitment of a person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed in this territory. Except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

§ 586. COMMITTED FOR REASONABLE TIME.] If from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody for a time, specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive of this territory, on the requisition of the executive authority of the state or territory in which he committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged.

§ 587. ADMISSION TO BAIL.] The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this territory.

§ 588. NOTICE TO DISTRICT ATTORNEY.] Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney.

§ 589. DUTY OF DISTRICT ATTORNEY.] The district attorney must immediately thereafter, give notice to the executive authority of the state or territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

§ 590. DISCHARGED, UNLESS.] The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this territory.

§ 591. MAGISTRATE TO RETURN PROCEEDINGS] The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or continue his detention for a longer time, or re-admit him to bail, to appear and surrender himself within a time specified in the undertaking.

§ 592. ACCOUNTS FOR FOREIGN ARRESTS.] When the governor shall demand from the executive authority of a state or territory of the United States, or of a foreign government, the surrender to the authorities of this territory, of a fugitive from justice, the accounts of the persons employed by him for that purpose must be paid out of the territorial treasury.

§ 593. NO COMPENSATION ALLOWED.] No compensation, fee, or reward of any kind, can be paid to, or received by a public officer of this territory, for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this territory, or detaining him herein, except as provided in section 592.

§ 594. MISDEMEANOR.] A violation of the last section is a misdemeanor.

CHAPTER XII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

§ 595. NO INDICTMENT.] When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 596. WHEN NOT BROUGHT TO TRIAL.] If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the indictment is triable after it is found, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 597. COURT MAY ORDER CONTINUANCE.] If the defendant is not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

§ 598. ACTION DISMISSED] If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

§ 599. REASONS FOR DISMISSAL IN ORDER.] The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice order an action or indictment to be dismissed; but in that case the reasons of the dismissal must be set forth in the order which must be entered upon the minutes.

§ 600. NOLLE PROSEQUI ABOLISHED.] The entry of a nolle prosequi is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

§ 601. DISMISSAL NOT A BAR.] An order for the dismissal of the action, as provided in this chapter is not a bar to any other prosecution for the same offense.

CHAPTER XIII.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

§ 602. RULE OF CONSTRUCTION.] The rule of common law that penal statutes are to be strictly construed, has no application to this code. This code establishes the law of this territory respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice.

§ 603. CODE NOT RETROACTIVE] No part of this code is retroactive unless expressly so declared.

§ 604. CONSTRUCTION OF WORDS.] Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word person includes a corporation as well as a natural person.

§ 605. WRITING.] The term writing includes printing.

§ 606. OATH.] The term oath includes an affirmation.

§ 607. WHAT SIGNATURE INCLUDES.] The term signature includes a mark when the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.

§ 608. TO WHAT CODE APPLIES] This code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect.

§ 609. EFFECT UPON ACTIONS COMMENCED.] All modes of procedure in criminal actions heretofore enacted in this territory having relation to any matters herein provided for shall, upon the taking effect of this code, be entirely abrogated, and from thence abolished: *Provided, however*, That all proceedings of every kind or character whatsoever, commenced before the taking effect of this code, shall not by reason of anything in this code contained, be deemed to have abated: *Provided*, That this code shall not be construed as repealing the procedure in justices' courts in cases in which they have lawful original jurisdiction: *And provided further*, That this code shall not be construed as repealing an act entitled "An act respecting grand and petit jurors of the district courts," approved December 24, 1867.

§ 610. COMMON LAW WHEN CODE SILENT.] That from and after the taking effect of this act, the procedure, practice and pleadings in the district courts of this territory, in criminal actions or in matters of a criminal nature, not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law, and assimilated as near as may be with the procedure, practice and pleadings of the United States or federal side of said courts.

§ 611. WHEN TO TAKE EFFECT.] This act shall take effect at noon on the tenth day of March, A. D., one thousand eight hundred and seventy-five.

Approved, January 15, 1875.

NOTE.—The foregoing code is printed as amended by the act approved February 16, 1877, in sections 9, 19, 402, 422, 426 and 552 to 560, both inclusive; also by inserting the words "territory of Dakota" in place of the "people of this territory" or the like corresponding phrases.

CHAPTER XIV.

JAILS.

AN ACT for the Regulation of County Jails. [Chapter XLVIII, Laws of 1862.]

§ 612. JUDGES PRESCRIBE RULES FOR JAILS.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* The judges of the district courts of the several judicial districts of this territory, shall from time to time, as they may deem necessary, prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects:

1. The cleanliness of the prisoners.
2. The classification of prisoners in regard to sex, age and crime, and also persons insane, idiots and lunatics.
3. Beds and clothing.
4. Warming, lighting and ventilation of the prison.
5. The employment of medical and surgical aid when necessary.
6. Employment, temperance and instruction of the prisoners.
7. The supplying of each prisoner with a bible.
8. The intercourse between prisoners and their counsel and other persons.
9. The punishment of prisoners for violation of the rules of the prison.
10. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners: *Provided*, That such rules shall not be contrary to the laws of this territory.

§ 613. HOW PROMULGATED AND PRESERVED.] The said judges shall, as soon as necessary, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioner forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules to the secretary of the territory, who may file away and preserve the same.

§ 614. DUTY OF SHERIFF.] The sheriff shall, on the receipt of said rules cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail.

§ 615. JUDGES MAY AMEND RULES.] The judges aforesaid may from time to time, as they may deem necessary, revise, alter or amend said rules, and such revised rules shall be printed and disposed of by said commissioners and sheriff, in the same manner as is directed by sections 613 and 614 of this act.

§ 616. SHERIFF HAS CHARGE OF JAIL.] The sheriff, or, in case of his death, removal or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects to the rules and directions of said district judge above specified, or which may from time to time, by said judge, be made and communicated to him by said commissioners.

§ 617. SHERIFF TO KEEP JAIL REGISTER.] The sheriff or other officers performing the duties of sheriff of each county in this territory, shall, as soon as necessary after the passage of this act, procure, at the expense of the proper county, a suitable book, to be called the jail register, in which the said sheriff, by himself or his jailer shall enter:

1. The name of each prisoner, with the date and cause of his or her commitment.
2. The date or manner of his or her discharge.
3. What sickness, if any, has prevailed in the jail during the year, and if known, what were the causes of such disease.
4. Whether any, or what labor has been performed by the prisoners, and the value thereof.
5. The practice observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing.
6. The habits of the prisoners as to personal cleanliness, diet, and order.
7. The means furnished prisoners of literary, moral and religious instruction, and of labor.
8. All other matters required by said rules, or in the discretion of such sheriff deemed proper; that the said sheriff or other officers performing the duties of sheriff, shall carefully keep and preserve the said jail register, in the office of the jailer of his proper county, and at the expiration of said office, shall deliver the same to his successor in office.

§ 618. SHERIFF TO MAKE JAIL REPORT.] The sheriff or other officer performing the duties of sheriff, shall on or before the first Monday of November in each year, make out in writing, from said jail register, a jail report, one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of the territory, and it shall be the duty of the secretary of the territory to communicate the reports of the several sheriffs of this territory to the legislative assembly, on or before the tenth day of its session annually.

§ 619. CHARGE TO GRAND JURY.] It shall be the duty of the district court to give this act in charge of the grand jury once each term of said court, and lay before them any and all rules, plans, or regulations, established by the district judge, relating to county jails and prison discipline, which shall then be in force.

§ 620. GRAND JURY VISIT JAIL AND REPORT.] That the grand jury of each county in this territory shall, once at each term of the district court, while in attendance, visit the jail, examine its state and condition; examine and inquire into the discipline and treatment of prisoners, their habits, diet, and accommodations, and it shall be their duty to report to said court in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this act have been violated. It shall also be the duty of the county commissioners of each county of this territory to visit the jail of their county once during each of their regular meetings of each year.

§ 621. DUTY OF COUNTY BOARD IN RELATION TO JAILS.] It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, beds and bedding, night buckets, and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury; and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever requiried by said commissioner, district judge, or grand jury.

§ 622. SHERIFF PROVIDES BOARD AND NECESSARIES.] It shall be the duty of the sheriff of each county to provide, first, bed clothing, washing, nursing, when required, and board generally, and all necessaries for the comfort and welfare of said prisoners, as the said judge by his said rules shall designate, for all persons confined by law, and he shall be allowed such compensation for services required by the provisions of this act, as may be prescribed by the county commissioners of their respective counties.

§ 623. SHERIFF TO VISIT JAIL, WHEN.] The sheriff shall visit the jail in person, and examine into the condition of each prisoner at least once each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms used for the confinement of prisoners, to be thoroughly whitewashed at least three times in each year.

§ 624. JAILOR TO BE DEPUTY SHERIFF.] The jailor or keeper of the jail shall, unless the sheriff elect to act as jailor in person, be a deputy appointed by the sheriff, and such jailor shall take the necessary oaths before entering upon the duties of his office: *Provided*, The sheriff shall in all cases be liable for the negligence and misconduct of the jailor as of other deputies.

§ 625. IF SHERIFF OR JAILOR REFUSE—PENALTY.] If the sheriff or jailor, having in charge any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to any other duty or duties required of him by this act, he shall, on conviction thereof by indictment for each case of such failure or neglect of duty as aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than ten dollars, nor more than one hundred dollars, to be assessed by the district court of the proper district.

§ 626. EFFECT.] This act shall take effect and be in force from and after its passage.

Approved, May 8, 1862.

CHAPTER XV.

PRISONS AND IMPRISONMENT FOR OFFENSES.

[Chapter XXXIII, Laws of 1862-3.]

§ 627. COMMON JAILS USED AS PRISONS.] The common jails now erected, or which shall hereafter be erected, in the several counties in the charge of the respective sheriffs, shall be used as prisons:

1. For the detention of persons charged with offenses, and duly committed for trial.

2. For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause.

3. For the confinement of persons pursuant to a sentence, upon a conviction for an offense, and of all other persons duly committed for any cause authorized by law.

4. For the confinement of persons who may be sentenced to imprisonment in the territorial prison, until a suitable prison shall be provided.

§ 628. WHEN NO JAIL IN COUNTY.] Whenever there is no jail erected in any county, every judicial or executive officer of such county who shall have power to order, sentence, or deliver any person to the county jail, may order, sentence or deliver such person to the jail of any adjoining county; and if there is no jail erected in any adjoining county, then to either of the forts or garrisons in the territory, with the consent of the commanding officer of the same; and the jailor of any such adjoining county shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced, or delivered to him by any officer or court of his own county. The county from which such prisoner was taken, shall pay all the expenses of keeping and maintaining him in said jail.

§ 629. EXPENSES OF—HOW PAID—LIMITATION.] All charges and expenses for safe keeping and maintaining convicts who have been sentenced to confinement in the territorial prison shall be paid out of the treasury of the territory yearly, the accounts of the keeper being first allowed by the board of county commissioners of the county where the convict shall be confined; and the expenses of safe keeping and maintaining persons charged with offenses, and duly committed for trial, and of those who are sentenced to confinement in the county jail, or who may be committed for the non-payment of any fine, shall be paid out of the treasury of the county, the account of the keeper being in like manner allowed by the board of county commissioners: *Provided*, That the territory, nor any county, shall ever pay more than two and a half dollars a week for the support of any person as aforesaid.

§ 630. COMMISSIONERS INSPECTORS OF PRISONS.] The county commissioners in the several counties shall be inspectors of the prisons in their respective counties, and shall visit them at least once in each year, and shall examine fully into the condition of such prison, as to health, cleanliness and discipline; and the keeper thereof shall lay before them a calendar setting forth the name, age and cause of committal of each prisoner; and if it shall appear to the said inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice to the district attorney of the county.

§ 631. NO LIQUOR TO PRISONERS.] No sheriff, jailor, or keeper of any prison, shall, under any pretense, give, sell or deliver to any person committed to any prison, for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless a physician shall certify in writing, that the health of such prisoner requires it, in which case he may be allowed the quantity prescribed, and no more. And no sheriff, jailor, or keeper, as aforesaid, shall put up, or keep in the same room, male and female prisoners together.

§ 632. PENALTY—SEXES SEPARATE.] If any sheriff, jailor, or keeper of any prison, shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor, prohibited in section 631 of this chapter, or shall place or keep together prisoners of different sexes, contrary to the provisions of said section 631, he shall in each case, forfeit and pay for the first offense the sum of twenty five dollars, and such officer shall, on a second conviction, be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailor or keeper of any prison, for the term of five years.

§ 633. LIQUOR BY OTHER PERSONS.] If any person, other than is mentioned in the preceding section, shall sell or deliver to any person committed for any cause whatever, any liquor, prohibited in this chapter, or shall have in his possession, in the precincts of any prison, any such liquor, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars.

§ 634. PRISON KEPT CLEANLY.] The keeper of such prison shall see that the same is constantly kept in a cleanly and healthful condition, and shall see that strict attention is constantly paid in the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the shirt of each prisoner to be washed at least once in each week; each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either for drink or for the purpose of personal cleanliness, and with a clean towel once a week, and shall be served three times each day with wholesome food, which shall be well cooked and in sufficient quantity.

§ 635. BIBLE FURNISHED EACH PRISONER.] The keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the bible, or new testament, to be used by such prisoner at proper seasons during his confinement, and any minister of the gospel, disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

§ 636. CALENDAR OF ALL PERSONS COMMITTED—CONTENTS.] The sheriffs of the respective counties shall keep a true and exact calendar, or register of all persons committed to any prison under their care, and the same shall be kept in a book, to be provided by the county for that purpose; said calendar shall contain the names of all persons who shall be committed to prison, the places of abode, the time of their commitment, shall state the cause of their commitment, and the authority that committed them, and if they are committed for criminal offenses shall contain a description of their persons, and when any prisoner shall be liberated, said calendar shall state the time when; and the authority by which such liberation took place, and if any prisoner escapes shall also state particularly the time and manner of said escape.

§ 637. SHERIFF TO FURNISH COURT WITH COPY OF CALENDAR.] At the opening of each session of the district court, within his county, the sheriff shall return a copy of said calendar under his hand, to the judge holding said court, and if any sheriff shall neglect or refuse so to do, he shall be punished by fine not exceeding three hundred dollars.

§ 638. JAILS—HOW CONSTRUCTED.] In the jails erected, or which shall be hereafter erected in this territory, there shall be provided sufficient and convenient apartments for confining prisoners not criminal, separate from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other.

§ 639. SOLITARY IMPRISONMENT.] Whenever any person shall be duly sentenced to solitary imprisonment and confinement at hard labor, in the territorial prison, or either of them, the sheriff of the proper county is required to execute such sentence of solitary imprisonment until a suitable territorial prison shall be provided, by confining such convict in one of the cells of the jail, or if there be no such cell, then in the most retired and solitary part of the jail, and during the time of such solitary imprisonment the convict shall be fed with bread and water only, unless other food shall be necessary for the preservation of his health, and no intercourse shall be allowed with such convict during such confinement, except for the conveyance of food and other necessary purposes.

§ 640. IMPRISONMENT AT HARD LABOR.] Whenever any person shall be confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined, shall furnish such convict with suitable tools and materials to work with, if in the opinion of the said sheriff, the said convict can be profitably employed either in the jail or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined, and said county shall be entitled to his earnings.

§ 641. KEEPER ORDER SOLITARY CONFINEMENT.] Whenever any person committed to prison for any cause whatever, shall be unruly, or shall disobey any of the regulations, established for the management of prisons, the sheriff or keeper may order such prisoner to be kept in solitary confinement and fed on bread and water only, as is provided in section 639 of this chapter, for a period not exceeding twenty days for each offense.

§ 642. BEDDING, FUEL, &C.] The keeper of each prison shall furnish necessary bedding, clothing and fuel, and medical aid for all prisoners who shall be in his custody, and shall be paid therefor according to the provisions of section 629 of this chapter, and such payment shall be deducted from the sum he is entitled to receive for the weekly support of the prisoner, according to the provisions of said section 629.

§ 643. PENALTY FOR BREAKING PRISON.] If any person who may be in any prison, under sentence of imprisonment in the territorial prison, shall break the prison and escape, he shall be punished by imprisonment in the territorial prison for the term of one year, in addition to the unexpired term for which he was originally sentenced.

§ 644. SAME FOR PERSON NOT CONVICTED.] If any person who may be imprisoned pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial, for any offense not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

§ 645. SAME COMMITTED FOR CAPITAL OFFENSE.] If any person who shall be committed to prison, for the purpose of detaining him for trial, for a capital offense, shall break prison and escape, he shall be imprisoned in the territorial prison for the term of two years.

§ 646. PRISONERS IN CASE OF FIRE.] If any prison, or any building thereto, shall be on fire, and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them, so long as may be necessary to avoid such danger, and such removal and confinement shall not be deemed an escape of such prisoners.

§ 647. HELD FOR FINES AND COSTS.] When any poor convict shall have been confined in any prison for the space of six months, for the non-payment of fine and costs only, or either of them, the sheriff of the county in which such person shall be imprisoned shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such convict before them, either at the prison, or at such other convenient place thereto as they shall direct; the said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that such report is true, and the convict has not had since his conviction, any estate, real or personal, with which he could have paid the sum for the non payment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall forthwith discharge him.

§ 648. SHERIFF TO RECEIVE PRISONERS.] All sheriffs, jailors, prison-keepers, and their, and each and every, of all their deputies, within this territory, to whom any person or persons shall be sent or committed, by virtue of legal process, issued by or under the authority of the United States, shall be and they are hereby enjoined and required to receive such persons into custody, and to keep them safely until they be discharged by due course of the laws of the United States; and all such sheriffs, jailors, prison keepers and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this territory.

§ 649. PAY FOR KEEPING SAME.] The United States shall be liable to pay for the support and keeping of said prisoners the same charges and allowances as are allowed for the support and keeping of prisoners committed under authority of this territory.

§ 650. CALENDAR OF SAME.] Before every stated term of the United States court, to be held within this territory, the said sheriffs, jailors and prison keepers shall make out, under oath, a calendar of prisoners in their custody, under the authority of the United States, with the date of their commitment, by whom committed, and for what offense, and transmit the same to the judge of the district court of the United States, for this district, and at the end of every six months they shall transmit to the United States marshal of this territory, for allowance and payment of their account, if any, against the United States, for the support and keeping of such prisoners as aforesaid.

§ 651. PRISONS REQUIRED IN EVERY COUNTY.] That there shall be established and kept in every county, by authority of the board of county commissioners and at the expense of the county, a prison for the safe keeping of prisoners lawfully committed.

§ 652. GRAND JURIES TO EXAMINE PRISONS.] That the grand jury, at each term of the district court, shall make personal inspection of the condition of the county prison, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this duty in special charge to such grand jury, and it shall be imperative upon the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

§ 653. SHERIFFS OR DEPUTIES KEEP JAIL.] The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept. He shall keep separate rooms for the sexes, except where they are lawfully married; he shall provide proper meat, drink and fuel for prisoners.

§ 654. KEEPING PAID BY COUNTY.] Whenever a prisoner is committed for crime, or in any suit in behalf of the territory, the county board shall allow the sheriff his reasonable charge for supplying such prisoner.

§ 655. SHERIFF'S AUTHORITY.] When a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court, whence it issued, such sheriff shall keep a copy of the same, together with his returns made thereon, which copy, duly certified by such sheriff, shall be prima facie evidence of his right to retain such prisoner in custody.

§ 656. COMMITMENTS FILED BY SHERIFF.] All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly indorsed and filed, and safely kept in a suitable box by such sheriff, or by his deputy, acting as a jailor.

§ 657. DELIVER TO SUCCESSOR] Such box, with its contents, shall be delivered to the successor of the officer having charge of the prison.

§ 658. JAIL OF ANOTHER COUNTY.] When there is no sufficient prison in any county wherein any criminal offense shall have been committed, any judge of the district court of such county, upon application of the sheriff, may order any person charged with a criminal offense, and ordered to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail, and the sheriff of such nearest county shall, on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which said prisoner was sent, and the said sheriff shall, upon the order of the district court, or a judge thereof, re-deliver such prisoner when demanded.

§ 659. FUGITIVES IN ANY COUNTY JAIL.] Any county jail may be used for the safe keeping of any fugitive from justice or labor in this territory, in accordance with the provisions of any act of congress, and the jailor shall, in this case, be entitled to reasonable compensation for the support and custody of such fugitive from the officer having him in custody.

§ 660. JUVENILE PRISONERS.] Juvenile prisoners shall be treated with humanity, and in a manner calculated to promote their reformation; they shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends who desire to exert a moral influence over them, shall at all reasonable times be permitted.

§ 661. CONFLICTING ACTS REPEALED.] All acts or parts of acts inconsistent with this act, are hereby repealed.

§ 662. EFFECT.] This act shall take effect from and after its passage and approval.

Approved, January 9, 1863.

CHAPTER XVI.

CONVICTS.

AN ACT to Provide for the Custody of Convicts. [Chapter IX, Laws of 1870-1]

§ 663. GOVERNOR AUTHORIZED TO CONTRACT.] *Be it enacted by the Legislative Assembly of the Territory of Dakota,* That the governor is authorized, and it is hereby made his duty to enter into a contract with the proper authorities of the state of Iowa, to keep and maintain any convict or convicts now under conviction, or that may hereafter be convicted and sentenced by any of the districts courts of this territory, for violation of the laws thereof, during the time for which said convict or convicts may have been sentenced by courts or either of them, upon the terms most advantageous to the territory that he can obtain.

§ 664. PRISON FOR TERRITORY DESIGNATED.] That the state prison or penitentiary located at Fort Madison, in the state of Iowa, shall be regarded and recognized as the territorial prison of the territory of Dakota, and all persons who are now, or who may be hereafter, under conviction for any offense against the laws of the territory of Dakota, the penalty whereof is punishment by imprisonment in the territorial prison, shall be sentenced to the state prison of the said state of Iowa, and such sentence shall be as legal in all respects as if such person or persons had been sentenced to a territoral prison within the limits of the territory of Dakota: *Provided, however*, That the governor may, whenever the interests of the territory require it, annul and cancel the contract with the said state of Iowa, and enter into a new contract with the authorities of any other neighboring state to keep and maintain the convicts of this territory: *And provided further*, That should the said state of Iowa annul or cancel the said contract or agreement entered into with this territory, then in that case the governor is authorized, and it is hereby made his duty to enter into a contract upon the most favorable terms possible with the authorities of some other neighboring state to keep and maintain the convicts from this territory, and in either case, when the governor shall contract with any other neighboring state to keep and maintain the convicts of this territory, it shall be his duty to immediately notify the auditor and the several judges of the district courts of this territory, of the nature of said contract, and the location of the prison of said state, and after receiving such notification it shall be lawful for the said district judges to sentence persons convicted in their several courts when the punishment to be inflicted is imprisonment in the territorial prison to the prison designated by the governor as the one located in the state with whom he has made such contract, and all the provisions of this act shall in such case apply as fully and completely to the sentence and transportation of convicts to such prison as it does by virtue of this act to the state prison of Iowa.

§ 665. SHERIFFS TO CONVEY CONVICTS.] That the sheriff of each county within this territory shall, at the close of each term of the district court in such county, convey all persons who may have been convicted of offenses punishable by imprisonment in the territorial prison, and sentenced in accordance with the provisions of this act to the said state prison of the state of Iowa, and he shall receive from the territorial treasury, for services in going to and returning from such prison, including all expenses by him incurred, at the rate of ten cents per mile for each and every mile actually and necessarily traveled in going to and returning from said prison: *Provided, however*, That when more than one convict is taken at the same time, the sheriff shall receive in addition to ten cents per mile, all necessary expenses incurred in the way of fare and hiring help for the safe conveyance of said extra convicts.

§ 666. PENALTY FOR VIOLATION.] Should any sheriff fail to take all convicts at the same time to the said prison which may have been convicted at any one term of court as herein provided, or shall he knowingly demand or receive greater compensation than is expressly given herein by the preceding section, he shall be guilty of a misdemeanor, and upon conviction by any court having competent jurisdiction, shall be fined in any sum not less than twenty-five nor more than five hundred dollars for each offense.

§ 667. SHERIFF'S REPORT TO AUDITOR.] It shall be the duty of every sheriff who shall have conveyed any convict or convicts to the said prison at Fort Madison, or other prison designated by the governor in accordance with the provisions of section 664 of this act, to immediately notify the auditor of the territory in writing, of the exact date that said convict or convicts were received by the authorities of said prison, and a neglect of this duty by any sheriff of this territory, shall render him liable upon conviction before the district court wherein said sheriff shall reside, to a fine of not less than twenty-five nor more than two hundred dollars for each and every offense.

§ 668. ACCOUNTS OF SHERIFF TO BE AUDITED.] It shall be the duty of the auditor to audit all accounts presented by the sheriffs of the different counties of this territory, for services rendered under the provisions of this act in conveying convicts to the state prison, at Fort Madison, Iowa, or other prison designated by the governor as aforesaid when verified by the affidavit of such sheriff, that he actually and necessarily traveled the distance and rendered the services stated in his said account, and to draw a warrant on the territorial treasurer for the amount found due such sheriff for such services rendered.

§ 669. SAME FOR MAINTENANCE OF CONVICTS.] It shall be the duty of the auditor to audit all accounts presented by the authorities of the said state of Iowa or other state designated by the governor, as the one with whom he has contracted for keeping and maintaining the convicts of this territory, under such regulations as he may prescribe, and to draw his warrant or warrants on the territorial treasurer for the amount or amounts found due said state.

§ 670. EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, December 14, 1870.

CHAPTER XVII.

HABEAS CORPUS.

AN ACT Regulating the Proceedings on Habeas Corpus. [Chapter XLIV, Laws of 1862-3.]

§ 671. APPLICATION FOR—ISSUE AND SERVICE OF WRIT.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district court, in term time, or any judge thereof in vacation, for a writ of habeas corpus, which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of habeas corpus, unless it shall appear from the petition itself, or from the document annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved, which said writ, if issued by the court, shall be under the seal of the court; if by a judge, under the ~~hand of a judge~~, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith, to the intent that no officer, sheriff, jailor, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof. Every such writ shall be indorsed with these words, "by the habeas corpus act," and whenever the said writ shall, by any person, be served upon the sheriff, jailor, or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under officers or deputies, shall, upon payment or tender of the charges of bringing said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges carrying him back, if he shall be remanded, make return of such writ, and bring or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court, or absence of the judge, then before any of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

§ 672. PERSON NOT CRIMINALLY COMMITTED.] When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretense whatever, he or she may apply for a writ of habeas corpus as aforesaid. Application shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained, which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf. If the confinement or restraint is by virtue of any judicial writ, or process or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

§ 673. RETURN OF WRIT—HEARING—CAUSES FOR DISCHARGE.] Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge, which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case may require; if it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

1. When the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge.

3. Where the process is defective in some substantial form required by law.

4. Where the process, though in proper form, has been issued in a case or under circumstances where the laws do not allow process or orders for imprisonment or arrest to issue.

5. When, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner, under such process, is not the person empowered by law to detain him.

6. Where the process appears to have obtained by false pretense or bribery.

7. Where there is no general law, nor any judgment, order or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding

No court or judge, on the return of a habeas corpus, shall, in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted; in all cases where the imprisonment is a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper from, and directed to the proper officer, or admit the party to bail, if the case be bailable.

§ 674. RECOGNIZANCE WITH SECURITY.] When any person shall be admitted to bail on habeas corpus, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offense, conditioned for his or her appearance at the next district court, to be holden in and for the county where the offense was committed, or where the same is to be tried, where any court or judge shall admit to bail or remand any prisoner brought before him or them on any writ of habeas corpus, it shall be the duty of the said court or judge, to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave, which recognizance so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court, on the first day of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance, as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall refuse or neglect to bind any such witness or prisoner by recognizance, when taken as aforesaid he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

§ 675. REMANDING PRISONER—SECOND WRIT.] When any prisoner, brought up on a habeas corpus, shall be remanded to prison, it shall be the duty of the court or judge remanding him; if suchprisoner shall obtain a second writ of habeas corpus, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid, and if it shall appear that the said prisoner was remanded for any offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

§ 676. POWER OF JUDGE UNDER SECOND WRIT.] It shall not be lawful for any court or judge, on a second writ of habeas corpus obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offense, but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison, where the offense is not bailable, or where such prisoner shall fail to give the bail required.

§ 677. NOT AGAIN COMMITTED UNLESS INDICTED.] No person who has been discharged by order of a court or judge on a habeas corpus, shall be again imprisoned, restrained, or kept in custody for the same cause, unless he be afterwards indicted for the same offense; nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

1. If after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offense.

2. If in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action.

3. Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

§ 678. WANT OF PROSECUTION—WITNESSES CANNOT BE HAD.] If any person shall be committed for a criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offense, the prisoner shall be let at liberty by the court, unless the delay shall happen on the application of the prisoner; if such court at the second term shall be satisfied that the due exertions have been made to procure the evidence for and on behalf of the territory, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term; if any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the territory are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

§ 679. WRIT NOT TO DELAY TRIAL.] To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on habeas corpus under this act out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offense with which he or she stands charged is properly cognizable.

§ 680. REMOVAL FROM ONE PLACE OR JAIL TO ANOTHER.] Any person, being committed to any prison, or in custody of any officer, sheriff, jailor, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into other prison or custody, unless it be by habeas corpus, or some other any legal writ; or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail; or shall be removed from one place to another, within the county, in order to his discharge or trial in due course of law; or in case of sudden fire, infection, or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailors; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States, or territories; if any person shall, after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved, in the manner hereinafter mentioned.

§ 681. PENALTY IF JUDGE FAIL OR DELAY WRIT.] Any judge empowered by this act to issue writs of habeas corpus, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dollars.

§ 682. OFFICER REFUSING TO EXECUTE AND RETURN.] If any officer, sheriff, jailer, keeper or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this act, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon, the said court or judge may, and shall issue an attachment against such officer, sheriff, jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprize, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person, shall also forfeit to the prisoner or aggrieved party a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

§ 683. REMOVING OR CONCEALING.] Any one having a person in his custody or under his restraint, power or control, for whose relief a writ of habeas corpus is issued, who with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this territory, shall forfeit for every such offense, one thousand dollars, and be imprisoned not less than one year, nor more than five years; in any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of habeas corpus had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

§ 684. COPY OF COMMITMENT TO PRISONER.] Any sheriff or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

§ 685. RE-ARRESTING FOR SAME CAUSE.] Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a habeas corpus, shall, contrary to the provisions of this act, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

§ 686. PENALTIES GO TO PERSON.] All the pecuniary forfeitures under this act shall inure to the use of the party for whose benefit the writ of habeas corpus issued, and shall be sued for and recovered, with costs, in the name of the territory, by every person aggrieved.

§ 687. GENERAL ISSUE MAY BE PLEADED.] In any action or suit for any offense against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

§ 688. NO BAR.] The recovery of the said penalties shall be no bar to a civil suit for damages.

§ 689. WHO MAY ISSUE WRIT, &C.] The supreme and district courts within this territory, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this territory out of the county in which such principal or witness is required to be surrendered, or to any county in this territory, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

§ 690. EFFECT.] This act shall take effect and be in force from and after its passage.

Approved, January 9, 1863.

GENERAL REPEALING ACT.

AN ACT Declaring Certain Acts Repealed, and for Other Purposes

§ 1. ACTS OF FIRST SESSION, 1862.] *Be it enacted by the Legislative Assembly of the Territory of Dakota:* The following acts passed at the first session of the legislative assembly, in the year 1862, are repealed:

Chapters one, two, three, five, six, seven, eight, nine, ten, eleven, twenty, twenty-three, twenty-five, twenty-six, twenty seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-nine, ninety, and ninety-one.

§ 2. SECOND SESSION, 1862–3.] The following acts passed at the second session of the legislative assembly in the years 1862–3, are repealed:

Chapters one to thirty-two inclusive, and chapters thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty-two, fifty-three, fifty-six and fifty-seven.

§ 3. THIRD SESSION, 1863–4.] The following acts passed at the third session of the legislative assembly in the years 1863–4, are repealed:

Chapters one, two, three, six, seven, eleven, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, thirty, forty, forty-one and forty-two.

§ 4. FOURTH SESSION, 1864–5.] The following acts passed at the fourth session of the legislative assembly in the years 1864–5, are repealed:

Chapters two, three, four, six, seven, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen, nineteen, twenty, thirty, thirty-one, thirty-two, and thirty-three.

§ 5. FIFTH SESSION, 1865–6] The following acts passed at the fifth session of the legislative assembly in the years 1865–6, are repealed:

Chapters one, an act to establish a civil code; two, an act to establish a justices' code; and chapters three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, thirty-one, thirty-two and thirty-three.

§ 6. SIXTH SESSION, 1866–7.] The following acts passed at the sixth session of the legislative assembly in the years 1866–7, are repealed:

Chapters one, two, three, four, eight, nine, ten, eleven, twelve, thirteen, sixteen, seventeen, eighteen, twenty and twenty-three.

§ 7. SEVENTH SESSION, 1867–8.] The following acts passed at the seventh session of the legislative assembly, in the years 1867–8, are repealed:

An act to simplify and abridge the practice, pleadings and proceedings in the courts of this territory, and chapters one, two, three, four, five, six, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five and thirty-seven.

§ 8. EIGHTH SESSION, 1868-9.] The following acts passed at the eighth session of the legislative assembly in the years 1868-9, are repealed:

Chapters one, two, three, four. five, six, seven, eight, nine, ten, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven.

§ 9. NINTH SESSION, 1870–1.] The following acts passed at the ninth session of the legislative assembly in the years 1870–1, are repealed:

Chapters one, two, three, four, five, six, seven, eight, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty-one, thirty-two, thirty-three, thirty-five, thirty-six, thirty-seven, thirty-eight and thirty-nine, and chapter five of the special and private laws.

§ 10. TENTH SESSION, 1872–3.] The following acts passed at the tenth session of the legislative assembly in the years 1872-3, are repealed:

Chapters one, two, three, four, five, six, seven, eight, nine, ten, eleven. twelve, thirteen, fourteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one and fifty-two, and chapters one, two, and ten of the special and private laws.

§ 11. ELEVENTH SESSION, 1874–5] The following acts passed at the eleventh session of the legislative assembly, in the years 1874–5, are repealed:

Chapters five, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven. twenty-eight, thirty-four, thirty-six, thirty-seven, thirty-nine, forty, forty-one, forty-two, forty-three, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one and ninety-three, and chapters eight, ten and fourteen of special and private laws.

§ 12. FORMER LAWS SUSTAIN RIGHTS, SUITS AND LIABILITIES THEREUNDER.] The repeal of the several acts in this act enumerated, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

§ 13. SAME OF PENALTIES AND FORFEITURES] All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, prior to such repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made: *Provided*, That all acts passed at the present session of the legislative assembly, relating to civil and criminal procedure, shall apply to and govern, so far as applicable, in all actions and proceedings now pending.

§ 14. LIMITATIONS, CIVIL AND CRIMINAL CONTINUE] All acts of limitation, whether applicable to civil or criminal actions, or for the recovery of penalties or forfeitures, embraced in any of said codes, and covered by the repealing provisions of this act, shall not be affected by such repeal, but all civil and criminal actions, and all proceedings, for causes arising or acts done or committed, prior to said repeal, may be commenced and prosecuted, within the same time, as if said repeal had not been made.

§ 15. TITLES AND ORDER OF CODES.] The several codes enacted by the legislative assembly, shall be known as the political code, the civil code, the code of civil procedure, the probate code, the justices' code, the penal code, and the code of criminal procedure, and by such titles may be referred to and amended, and in the publication and binding, shall be arranged in the above order, and the whole body of laws shall be designated, as the revised codes of the territory of Dakota.

§ 16. CONSTRUCTION—CODES DEEMED ONE ACT.] For the purposes of construction, the several codes passed at the present session of the legislative assembly shall be held and deemed to have been passed on the same day and as parts of the same statute. But if the provisions of any law passed at the present session of the legislative assembly contravene, or are inconsistent with the provisions of either of the codes, the provisions of such law shall prevail.

§ 17. CONFLICT ADJUSTED.] If the provisions of any code, title, chapter, or article, conflict with or contravene the provisions of any other code, title, chapter, or article, the provisions of each code, title, chapter, or article must prevail as to all matters and questions arising thereunder out of the same subject matter.

§ 18. SECRETARY MAY ARRANGE AND COMPILE.] In the publication of the codes and general statutes the secretary of the territory has power, without altering the general plan, to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute general statutes, not now embraced in the codes in the same, under the appropriate chapter or other heading.

§ 19. DATE OF EFFECT.] This act shall take effect and be in force from and after its passage and approval.

Approved, Feb. 17, 1877.

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APPENDIX.

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative, and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years, and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they shall be equally divided.

The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

SECTION 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel the member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish an uniform rule for naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign state.

SECTION 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there still remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.*

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

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* This clause of the constitution has been amended See twelfth article of the amendments.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

> I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.

SECTION 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions that shall expire at the end of their next sesson.

SECTION 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in the union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Sam'l Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton,

NEW JERSEY.

Wil. Livingston,
Wm. Paterson,
David Brearly,
Jona Dayton.

PENNSYLVANIA.

B. Franklin,
Robt. Morris,
Thos. Fitzsimons,
James Wilson,
Thomas Mifflin,
Geo. Clymer,
Jared Ingersoll,
Gouv. Morris.

DELAWARE.

Geo. Read,
John Dickinson,
Jaco. Broom,
Gunning Bedford, Jun'r,
Richard Bassett.

MARYLAND.

James M'Henry,
Danl. Carroll,
Dan. of St. Thos. Jenifer.

VIRGINIA.

John Blair,
James Madison, Jr.

NORTH CAROLINA.

Wm. Blount,
Hu. Williamson,
Rich'd Dobbs Spaight.

SOUTH CAROLINA.

J. Rutledge,
Charles Pinckney,
Charles Cotesworth Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION

AND

AMENDMENTS TO THE CONSTITUTION,

PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO ARTICLE V OF THE ORIGINAL CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment of crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the

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right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims, shall be held illegal and void.

SECTION 5. The congress shall have power to enforce, by appropriate legislation, the provisons of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

SECTION 2. The congress shall have power to enforce this article by appropriate legislation.